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● Packers and Stockyards Act, 1921, As Amended,

● Regulations,

● Statements of General Policy



U. S. DEPT. OF AGRICULTURE
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FEB 15 1965

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UNITED STATES DEPARTMENT OF AGRICULTURE

26.5, AGRICULTURAL MARKETING SERVICE,

PACKERS AND STOCKYARDS DIVISION.

February 1964

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UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

Packers and Stockyards Division

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PACKERS AND STOCKYARDS ACT, 1921, AS AMENDED

[Packers and Stockyards Act of August 15, 1921 (42 Stat. 159), as amended May 5, 1926 (44 Stat. 397), August 14, 1935 (49 Stat. 648), August 10, 1939 (53 Stat. 1351), June 19, 1942 (56 Stat. 372), July 12, 1943 (57 Stat. 422), August 28, 1958, September 2, 1958 (72 Stat. 944, 72 Stat. 1749), July 8, 1963 (77 Stat. 79). See also, acts of Congress approved June 7, 1934 (48 Stat. 926), June 25, 1948 (62 Stat. 909 and 991), May 24, 1949 (63 Stat. 107).]

AN ACT TO REGULATE INTERSTATE AND FOREIGN COMMERCE IN LIVESTOCK, LIVESTOCK PRODUCTS, DAIRY PRODUCTS, POULTRY, POULTRY PRODUCTS, AND EGGS, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled

TITLE I—DEFINITIONS

This act may be cited as the "Packers and Stockyards Act, 1921."
(7 U.S.C. 181.)

Sec. 2. (a) When used in this Act—

- (1) The term "person" includes individuals, partnerships, corporations, and associations;
- (2) The term "Secretary" means the Secretary of Agriculture;
- (3) The term "meat food products" means all products and byproducts of the slaughtering and meat-packing industry—if edible;
- (4) The term "livestock" means cattle, sheep, swine, horses, mules, or goats—whether live or dead;
- (5) The term "livestock products" means all products and byproducts (other than meats and meat food products) of the slaughtering and meat-packing industry derived in whole or in part from livestock; and
- (6) The term "commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession.

sion, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia. (7 U.S.C. 182.)

(b) For the purpose of this Act (but not in anywise limiting the foregoing definition) a transaction in respect to any article shall be considered to be in commerce if such article is part of that current of commerce usual in the livestock and meat-packing industries, whereby livestock, meats, meat food products, livestock products, dairy products, poultry, poultry products, or eggs are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for slaughter of livestock within the State and the shipment outside the State of the products resulting from such slaughter. Articles normally in such current of commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nation. (7 U.S.C. 183.)

TITLE II—PACKERS

Sec. 201. When used in this Act—

The term "packer" means any person engaged in the business (a) of buying livestock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (c) of manufacturing or preparing livestock products for sale or shipment in commerce, or (d) of marketing meats, meat food products, livestock products, dairy products, poultry, poultry products, or eggs in commerce; but no person engaged in such business of manufacturing or preparing livestock products or in such marketing business shall be considered a packer unless—

(1) Such person is also engaged in any business referred to in clause (a) or (b) above, or unless

(2) Such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, by himself or through his agents, servants, or employees, any interest in any business referred to in clause (a) or (b) above, or unless

(3) Any interest in such business of manufacturing or preparing livestock products, or in such marketing business is owned or controlled, directly or indirectly, through stock ownership or control or otherwise, by himself or through his agents, servants, or employees, by any person engaged in any business referred to in clause (a) or (b) above; or unless

(4) Any person or persons jointly or severally, directly or indirectly, through stock ownership or control or otherwise, by themselves or through their agents, servants, or employees, own or control in the aggregate 20 per centum or more of the voting power or control in such business of manufacturing or preparing livestock products, or in such marketing business and also 20 per centum or more of

such power or control in any business referred to in clause (a) or (b) above. (7 U.S.C. 191.)

Sec. 202.¹ It shall be unlawful with respect to livestock, meats, meat food products, livestock products in unmanufactured form, poultry, or poultry products for any packer or any live poultry dealer or handler to:

(a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in commerce; or

(b) Make or give, in commerce, any undue or unreasonable preference or advantage to any particular person or locality in any respect whatsoever, or subject, in commerce, any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; or

(c) Sell or otherwise transfer to or for any other packer or any live poultry dealer or handler, or buy or otherwise receive from or for any other packer or any live poultry dealer or handler, any article for the purpose or with the effect of apportioning the supply in commerce between any such packers, if such apportionment has the tendency or effect of restraining commerce or of creating a monopoly in commerce; or

(d) Sell or otherwise transfer to or for any other person, or buy or otherwise receive from or for any other person, any article for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in any article in commerce, or of restraining commerce; or

(e) Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in any article in commerce, or of restraining commerce; or

(f) Conspire, combine, agree, or arrange with any other persons (1) to apportion territory for carrying on business in commerce, or (2) to apportion purchases or sales of any article in commerce, or (3) to manipulate or control prices in commerce; or

(g) Conspire, combine, agree, or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by subdivision (a), (b), (c), (d), or (e). (7 U.S.C. 192.)

Sec. 203.² (a) Whenever the Secretary has reason to believe that any packer has violated or is violating any provisions of this title, he shall cause a complaint in writing to be served upon the packer, stating his charges in that respect, and requiring the packer to attend and testify at a hearing at a time and place designated therein, at least thirty days after the service of such complaint; and at such time and place there shall be afforded the packer a reasonable opportunity to be informed as to the evidence introduced against him (including the right of cross-examination), and to be heard in person or by counsel and through witnesses, under such regulations as the Secretary may prescribe. Any person for good cause shown may, on application, be allowed by the Secretary to intervene in such proceeding, and appear in person or by counsel. At any time prior to the close of the hearing

¹ Amended by acts of Congress, approved Aug. 14, 1935, and Sept. 2, 1958.

² Amended by an act of Congress, approved Aug. 28, 1958.

the Secretary may amend the complaint; but in case of any amendment adding new charges the hearing shall, on the request of the packer, be adjourned for a period not exceeding fifteen days.

(b) If, after such hearing, the Secretary finds that the packer has violated or is violating any provisions of this title covered by the charges, he shall make a report in writing in which he shall state his findings as to the facts, and shall issue and cause to be served on the packer an order requiring such packer to cease and desist from continuing such violation. The testimony taken at the hearing shall be reduced to writing and filed in the records of the Department of Agriculture.

(c) Until the record in such hearing has been filed in a court of appeals of the United States, as provided in section 204, the Secretary at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the packer to be heard, may amend or set aside the report or order, in whole or in part.

(d) Complaints, orders, and other processes of the Secretary under this section may be served in the same manner as provided in section 5 of the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914. (7 U.S.C. 193.)

Sec. 204.³ (a) An order made under section 203 shall be final and conclusive unless within thirty days after the service the packer appeals to the court of appeals for the circuit in which he has his principal place of business, by filing with the clerk of such court a written petition praying that the Secretary's order be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such packer will pay the costs of the proceedings if the court so directs.

(b) The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall thereupon file in the court the record in such proceedings, as provided in section 2112 of title 28, United States Code. If before such record is filed the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

(c) At any time after such petition is filed, the court, on application of the Secretary, may issue a temporary injunction, restraining, to the extent it deems proper, the packer and his officers, directors, agents, and employees, from violating any of the provisions of the order pending the final determination of the appeal.

(d) The evidence so taken or admitted, and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way.

(e) The court may affirm, modify, or set aside the order of the Secretary.

(f) If the court determines that the just and proper disposition of the case requires the taking of additional evidence, the court shall order the hearing to be reopened for the taking of such evidence, in such manner and upon such terms and conditions as the court may

³ Amended by an act of Congress, approved Aug. 28, 1958.

deem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings and his recommendations, if any, for the modification or setting aside of his order, with the return of such additional evidence.

(g) If the court of appeals affirms or modifies the order of the Secretary, its decree shall operate as an injunction to restrain the packer, and his officers, directors, agents and employees from violating the provisions of such order or such order as modified.

(h) The court of appeals shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to review, and to affirm, set aside, or modify, such orders of the Secretary, and the decree of such court shall be final except that it shall be subject to review by the Supreme Court of the United States upon certiorari, as provided in section 1254 of title 28, if such writ is duly applied for within sixty days after entry of the decree. The issue of such writ shall not operate as a stay of the decree of the court of appeals, insofar as such decree operates as an injunction, unless so ordered by the Supreme Court. (7 U.S.C. 194.)

Sec. 205. Any packer, or any officer, director, agent, or employee of a packer, who fails to obey any order of the Secretary issued under the provisions of section 203, or such order as modified—

(1) After the expiration of the time allowed for filing a petition in the court of appeals to set aside or modify such order, if no such petition has been filed within such time; or

(2) After the expiration of the time allowed for applying for a writ of certiorari, if such order, or such order as modified, has been sustained by the court of appeals and no such writ has been applied for within such time; or

(3) After such order, or such order as modified, has been sustained by the courts as provided in section 204: shall on conviction be fined not less than \$500 nor more than \$10,000, or imprisoned for not less than six months nor more than five years, or both. Each day during which such failure continues shall be deemed a separate offense. (7 U.S.C. 195.)

TITLE III—STOCKYARDS

Sec. 301.⁴ When used in this Act—

(a) The term “stockyard owner” means any person engaged in the business of conducting or operating a stockyard;

(b) The term “stockyard services” means services or facilities furnished at a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling, in commerce, of livestock;

(c) The term “market agency” means any person engaged in the business of (1) buying or selling in commerce livestock on a commission basis or (2) furnishing stockyard services; and

(d) The term “dealer” means any person, not a market agency, engaged in the business of buying or selling in commerce livestock, either on his own account or as the employee or agent of the vendor or purchaser. (7 U.S.C. 201.)

⁴ Amended by an act of Congress, approved Sept. 2, 1958.

Sec. 302.⁵ (a) When used in this title the term "stockyard" means any place, establishment, or facility commonly known as stockyards, conducted or operated for compensation or profit as a public market, consisting of pens, or other inclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce.

(b) The Secretary shall from time to time ascertain, after such inquiry as he deems necessary, the stockyards which come within the foregoing definition, and shall give notice thereof to the stockyard owners concerned, and give public notice thereof by posting copies of such notice in the stockyard, and in such other manner as he may determine. After the giving of such notice to the stockyard owner and to the public, the stockyard shall remain subject to the provisions of this title until like notice is given by the Secretary that such stockyard no longer comes within the foregoing definition. (7 U.S.C. 202.)

Sec. 303.⁶ After the expiration of thirty days after the Secretary has given public notice that any stockyard is within the definition of section 302, by posting copies of such notice in the stockyard, no person shall carry on the business of a market agency or dealer at such stockyard unless he has registered with the Secretary under such rules and regulations as the Secretary may prescribe, his name and address, the character of business in which he is engaged, and the kinds of stockyard services, if any, which he furnishes at such stockyard. Every other person operating as a market agency or dealer as defined in section 301 of the act may be required to register in such manner as the Secretary may prescribe. Whoever violates the provisions of this section shall be liable to a penalty of not more than \$500 for each such offense and not more than \$25 for each day it continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States. (7 U.S.C. 203.)

⁷ An act of Congress, approved July 12, 1943 (Public No. 129, 78th Congress), entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944 and for other purposes," contains the following provisions:

Packers and Stockyards Act: For carrying out the provisions of the Packers and Stockyards Act, approved August 15, 1921, as amended by the Act of August 14, 1935 (7 U.S.C. 181-229), \$364,070: *Provided*, That hereafter the Secretary may require reasonable bonds from every market agency and dealer, under such rules and regulations as he may prescribe, to secure the performance of their obligations, and whenever, after due notice and hearing, the Secretary finds any

⁵ Section 2(2) of Public Law 85-909 (Sept. 2, 1958) provided as follows:

"*Provided, however*, That nothing herein shall be deemed a definition of the term 'public stockyards' as used in section 15(5) of the Interstate Commerce Act."

⁶ Amended by an act of Congress, approved Sept. 2, 1958.

⁷ This provision was not a part of the Packers and Stockyards Act, but was included in Department of Agriculture appropriation acts from 1924 through 1942. The appropriation act of 1943 included the word "hereafter" and the provision has not been included in appropriation acts since.

registrant is insolvent or has violated any provisions of said Act he may issue an order suspending such registrant for a reasonable specified period. Such order of suspension shall take effect within not less than five days, unless suspended or modified or set aside by the Secretary or a court of competent jurisdiction. (7 U.S.C. 204.)

Sec. 304.⁸ It shall be the duty of every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard: *Provided*, That in any State where the weighing of livestock at a stockyard is conducted by a duly authorized department or agency of the State, the Secretary, upon application of such department or agency, may register it as a market agency for the weighing of livestock received in such stockyard, and upon such registration such department or agency and the members thereof shall be amenable to all the requirements of this act, and upon failure of such department or agency or the members thereof to comply with the orders of the Secretary under this act he is authorized to revoke the registration of such department or agency and to enforce such revocation as provided in section 315 of this act. (7 U.S.C. 205.)

Sec. 305. All rates or charges made for any stockyard services furnished at a stockyard by a stockyard owner or market agency shall be just, reasonable, and nondiscriminatory, and any unjust, unreasonable, or discriminatory rate or charge is prohibited and declared to be unlawful. (7 U.S.C. 206.)

Sec. 306. (a) Within sixty days after the Secretary has given public notice that a stockyard is within the definition of section 302, by posting copies of such notice in the stockyard, the stockyard owner and every market agency at such stockyard shall file with the Secretary, and print and keep open to public inspection at the stockyard, schedules showing all rates and charges for the stockyard services furnished by such person at such stockyard. If a market agency commences business at the stockyard after the expiration of such sixty days such schedules must be filed before any stockyard services are furnished.

(b) Such schedules shall plainly state all such rates and charges in such detail as the Secretary may require, and shall also state any rules or regulations which in any manner change, affect, or determine any part or the aggregate of such rates or charges, or the value of the stockyard services furnished. The Secretary may determine and prescribe the form and manner in which such schedules shall be prepared, arranged, and posted, and may from time to time make such changes in respect thereto as may be found expedient.

(c) No changes shall be made in the rates or charges so filed and published, except after ten days' notice to the Secretary and to the public filed and published as aforesaid, which shall plainly state the changes proposed to be made and the time such changes will go into effect; but the Secretary may, for good cause shown, allow changes on less than ten days' notice, or modify the requirements of this section

⁸ Amended by an act of Congress, approved May 5, 1926.

in respect to publishing, posting, and filing of schedules, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

(d) The Secretary may reject and refuse to file any schedule tendered for filing which does not provide and give lawful notice of its effective date, and any schedule so rejected by the Secretary shall be void and its use shall be unlawful.

(e) Whenever there is filed with the Secretary any schedule, stating a new rate or charge, or a new regulation or practice affecting any rate or charge, the Secretary may either upon complaint or upon his own initiative without complaint, at once, and, if he so orders, without answer or other formal pleading by the person filing such schedule, but upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate, charge, regulation, or practice, and pending such hearing and decision thereon the Secretary, upon filing with such schedule and delivering to the person filing it a statement in writing of his reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, regulation, or practice, but not for a longer period than thirty days beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, regulation, or practice goes into effect, the Secretary may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If any such hearing can not be concluded within the period of suspension, the Secretary may extend the time of suspension for a further period not exceeding thirty days, and if the proceeding has not been concluded and an order made at the expiration of such thirty days, the proposed change of rate, charge, regulation, or practice shall go into effect at the end of such period.

(f) After the expiration of the sixty days referred to in subdivision (a) no person shall carry on the business of a stockyard owner or market agency unless the rates and charges for the stockyard services furnished at the stockyard have been filed and published in accordance with this section and the orders of the Secretary made thereunder; nor charge, demand, or collect a greater or less or different compensation for such services than the rates and charges specified in the schedules filed and in effect at the time; nor refund or remit in any manner any portion of the rates or charges so specified (but this shall not prohibit a cooperative association of producers from bona fide returning to its members, on a patronage basis, its excess earnings on their livestock, subject to such regulations as the Secretary may prescribe); nor extend to any person at such stockyard any stockyard services except such as are specified in such schedules.

(g) Whoever fails to comply with the provisions of this section or of any regulation or order of the Secretary made thereunder shall be liable to a penalty of not more than \$500 for each such offense, and not more than \$25 for each day it continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

(h) Whoever willfully fails to comply with the provisions of this section or of any regulation or order of the Secretary made thereunder

shall on conviction be fined not more than \$1,000, or imprisoned not more than one year, or both. (7 U.S.C. 207.)

Sec. 307. It shall be the duty of every stockyard owner and market agency to establish, observe, and enforce just, reasonable, and nondiscriminatory regulations and practices in respect to the furnishing of stockyard services, and every unjust, unreasonable, or discriminatory regulation or practice is prohibited and declared to be unlawful. (7 U.S.C. 208.)

Sec. 308. (a) If any stockyard owner, market agency, or dealer violates any of the provisions of sections 304, 305, 306, or 307, or of any order of the Secretary made under this title, he shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of such violation.

(b) Such liability may be enforced either (1) by complaint to the Secretary as provided in section 309, or (2) by suit in any district court of the United States of competent jurisdiction; but this section shall not in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies. (7 U.S.C. 209.)

Sec. 309. (a) Any person complaining of anything done or omitted to be done by any stockyard owner, market agency, or dealer (hereinafter in this section referred to as the "defendant") in violation of the provisions of sections 304, 305, 306, or 307, or of an order of the Secretary made under this title, may, at any time within ninety days after the cause of action accrues, apply to the Secretary by petition which shall briefly state the facts, whereupon the complaint thus made shall be forwarded by the Secretary to the defendant, who shall be called upon to satisfy the complaint, or to answer it in writing, within a reasonable time to be specified by the Secretary. If the defendant within the time specified makes reparation for the injury alleged to be done he shall be relieved of liability to the complainant only for the particular violation thus complained of. If the defendant does not satisfy the complaint within the time specified, or there appears to be any reasonable ground for investigating the complaint, it shall be the duty of the Secretary to investigate the matters complained of in such manner and by such means as he deems proper.

(b) The Secretary, at the request of the livestock commissioner, board of agriculture, or other agency of a State or Territory having jurisdiction over stockyards in such State or Territory, shall investigate any complaint forwarded by such agency in like manner and with the same authority and powers as in the case of a complaint made under subdivision (a).

(c) The Secretary may at any time institute an inquiry on his own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made to or before the Secretary, by any provision of this title, or concerning which any question may arise under any of the provisions of this title, or relating to the enforcement of any of the provisions of this title. The Secretary shall have the same power and authority to proceed with any inquiry instituted upon his own motion as though he had been appealed to by petition, including the power to make and enforce any order or orders in the

case or relating to the matter or thing concerning which the inquiry is had, except orders for the payment of money.

(d) No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

(e) If after hearing on a complaint the Secretary determines that the complainant is entitled to an award of damages, the Secretary shall make an order directing the defendant to pay to the complainant the sum to which he is entitled on or before a day named.

(f) If the defendant does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may within one year of the date of the order file in the district court of the United States for the district in which he resides or in which is located the principal place of business of the defendant, or in any State court having general jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages and the order of the Secretary in the premises. Such suit in the district court shall proceed in all respects like other civil suits for damages except that the findings and orders of the Secretary shall be prima facie evidence of the facts therein stated, and the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of the costs of the suit. (7 U.S.C. 210.)

Sec. 310.⁹ Whenever after full hearing upon a complaint made as provided in section 309, or after full hearing under an order for investigation and hearing made by the Secretary on his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, or discriminatory, the Secretary—

(a) May determine and prescribe what will be the just and reasonable rate or charge, or rates or charges, to be thereafter in such case observed as both the maximum and minimum to be charged, and what regulation or practice is or will be just, reasonable, and nondiscriminatory to be thereafter followed; and

(b) May make an order that such owner or operator (1) shall cease and desist from such violation to the extent to which the Secretary finds that it does or will exist; (2) shall not thereafter publish, demand, or collect any rate or charge for the furnishing of stockyard services more or less than the rate or charge so prescribed; and (3) shall conform to and observe the regulation or practice so prescribed. (7 U.S.C. 211.)

Sec. 311.¹⁰ Whenever in any investigation under the provisions of this title, or in any investigation instituted by petition of the stockyard owner, market agency, or dealer concerned, which petition is hereby authorized to be filed, the Secretary after full hearing finds that any rate, charge, regulation, or practice of any stockyard owner, mar-

⁹ Amended by an act of Congress, approved Aug. 10, 1939.

¹⁰ Amended by an act of Congress, approved Sept. 2, 1958.

ket agency, or dealer for or in connection with the buying or selling on a commission basis or otherwise, receiving, marketing, feeding, holding, delivery, shipment, weighing, or handling, not in commerce, of livestock, causes any undue or unreasonable advantage, prejudice, or preference as between persons or localities in intrastate commerce in livestock on the one hand and interstate or foreign commerce in livestock on the other hand, or any undue, unjust, or unreasonable discrimination against interstate or foreign commerce in livestock, which is hereby forbidden, and declared to be unlawful, the Secretary shall prescribe the rate, charge, regulation, or practice thereafter to be observed, in such manner as, in his judgment, will remove such advantage, preference, or discrimination. Such rates, charges, regulations, or practices shall be observed while in effect by the stockyard owners, market agencies, or dealers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding. (7 U.S.C. 212.)

Sec. 312.¹¹ (a) It shall be unlawful for any stockyard owner, market agency, or dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in connection with the receiving, marketing, buying, or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing or handling, in commerce, of livestock.

(b) Whenever complaint is made to the Secretary by any person, or whenever the Secretary has reason to believe, that any stockyard owner, market agency, or dealer is violating the provisions of subdivision (a), the Secretary after notice and full hearing may make an order that he shall cease and desist from continuing such violation to the extent that the Secretary finds that it does or will exist.

(7 U.S.C. 213.)

Sec. 313. Except as otherwise provided in this Act, all orders of the Secretary under this title, other than orders for the payment of money, shall take effect within such reasonable time, not less than five days, as is prescribed in the order, and shall continue in force until his further order, or for a specified period of time, according as is prescribed in the order, unless such order is suspended or modified or set aside by the Secretary or is suspended or set aside by a court of competent jurisdiction. (7 U.S.C. 214.)

Sec. 314. (a) Any stockyard owner, market agency, or dealer who knowingly fails to obey any order made under the provisions of sections 310, 311, or 312 shall forfeit to the United States the sum of \$500 for each offense. Each distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense. Such forfeiture shall be recoverable in a civil suit in the name of the United States.

(b) It shall be the duty of the various United States attorneys, under the direction of the Attorney General, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. (7 U.S.C. 215.)

¹¹ Amended by an act of Congress, approved Sept. 2, 1958.

Sec. 315. If any stockyard owner, market agency, or dealer fails to obey any order of the Secretary other than for the payment of money while the same is in effect, the Secretary, or any party injured thereby, or the United States by its Attorney General, may apply to the district court for the district in which such person has his principal place of business for the enforcement of such order. If after hearing the court determines that the order was lawfully made and duly served and that such person is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such person, his officers, agents, or representatives from further disobedience of such order or to enjoin upon him or them obedience to the same. (7 U.S.C. 216.)

Sec. 316. For the purposes of this title, the provisions of all laws relating to the suspending or restraining the enforcement, operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of this title, and to any person subject to the provisions of this title. (7 U.S.C. 217.) (See 5 U.S.C. 1031 et seq.)

Sec. 317.¹² (a) The Secretary may, upon written application made to him, and if he deems it necessary, authorize the charging and collection, at any stockyard subject to the provisions of this Act, by any department or agency of any State in which branding or marking or both branding and marking livestock as a means of establishing ownership prevails by custom or statute, or by a duly organized livestock association of any such State, of a reasonable and nondiscriminatory fee for the inspection of brands, marks, and other identifying characteristics of livestock originating in or shipped from such State, for the purpose of determining the ownership of such livestock. No charge shall be made under any such authorization until the authorized department, agency, or association has registered as a market agency. No more than one such authorization shall be issued with respect to such inspection of livestock originating in or shipped from any one State. If more than one such application is filed with respect to such inspection of livestock originating in or shipped from any one State, the Secretary shall issue such authorization to the applicant deemed by him best qualified to perform the proposed service, on the basis of (1) experience, (2) financial responsibility, (3) extent and efficiency of organization, (4) possession of necessary records, and (5) any other factor relating to the ability of the applicant to perform the proposed service. The Secretary may receive and consider the recommendations of the commissioner, secretary, or director of agriculture, or other appropriate officer or agency of a State as to the qualifications of any applicant in such State. The decision of the Secretary as to the applicant best qualified shall be final.

(b) The provisions of this title relating to the filing, publication, approval, modification, and suspension of any rate or charge for any stockyard service shall apply with respect to charges authorized to be made under this section.

¹² Amended by an act of Congress, approved June 19, 1942.

(c) Charges authorized to be made under this section shall be collected by the market agency or other person receiving and disbursing the funds received from the sale of livestock with respect to the inspection of which such charge is made, and paid by it to the department, agency, or association performing such service.

(d) The Secretary may, if he deems it to be in the public interest, suspend, and after hearing revoke any authorization and registration issued under the provisions of this section or any similar authorization and registration issued under any other provision of law. The order of the Secretary suspending or revoking any such authorization and registration shall not be subject to review. (7 U.S.C. 217a.)

TITLE IV—GENERAL PROVISIONS

Sec. 401. Every packer or any live poultry dealer or handler, stockyard owner, market agency, and dealer shall keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business, including the true ownership of such business by stockholding or otherwise. Whenever the Secretary finds that the accounts, records, and memoranda of any such person do not fully and correctly disclose all transactions involved in his business, the Secretary may prescribe the manner and form in which such accounts, records, and memoranda shall be kept, and thereafter any such person who fails to keep such accounts, records, and memoranda in the manner and form prescribed or approved by the Secretary shall upon conviction be fined not more than \$5,000, or imprisoned not more than three years, or both. (7 U.S.C. 221.) (See Sec. 503)

Sec. 402. For the efficient execution of the provisions of this Act, and in order to provide information for the use of Congress, the provisions (including penalties) of sections 6, 8, 9, and 10 of the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of this Act and to any person subject to the provisions of this Act, whether or not a corporation. The Secretary, in person or by such agents as he may designate, may prosecute any inquiry necessary to his duties under this Act in any part of the United States. (7 U.S.C. 222.) (See Sec. 503)

Sec. 403. When construing and enforcing the provisions of this Act, the act, omission, or failure of any agent, officer, or other person acting for or employed by any packer or any live poultry dealer or handler, stockyard owner, market agency, or dealer, within the scope of his employment or office, shall in every case also be deemed the act, omission, or failure of such packer or any live poultry dealer or handler, stockyard owner, market agency, or dealer, as well as that of such agent, officer, or other person. (7 U.S.C. 223.) (See Sec. 503)

Sec. 404. The Secretary may report any violation of this Act to the Attorney General of the United States, who shall cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay. (7 U.S.C. 224.) (See Sec. 503)

Sec. 405. Nothing contained in this Act, except as otherwise provided herein, shall be construed—

(a) To prevent or interfere with the enforcement of, or the procedure under, the provisions of the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, the Interstate Commerce Act as amended, the Act entitled "An Act to promote export trade, and for other purposes," approved April 10, 1918, or sections 73 to 77, inclusive, of the Act of August 27, 1894, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," as amended by the Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation to provide revenue for the Government, and for other purposes,'" approved February 12, 1913, or

(b) To alter, modify, or repeal such Acts or any part or parts thereof, or

(c) To prevent or interfere with any investigation, proceeding, or prosecution begun and pending at the time this Act becomes effective. (7 U.S.C. 225.)

Sec. 406.¹³ (a) Nothing in this Act shall affect the power or jurisdiction of the Interstate Commerce Commission, nor confer upon the Secretary concurrent power or jurisdiction over any matter within the power or jurisdiction of such Commission. (7 U.S.C. 226.)

(b) The Federal Trade Commission shall have power and jurisdiction over any matter involving meat, meat food products, livestock products in unmanufactured form, or poultry products, which by this act is made subject to the power or jurisdiction of the Secretary, as follows:

(1) When the Secretary in the exercise of his duties requests of the Commission that it make investigations and reports in any case.

(2) In any investigation of, or proceeding for the prevention of, an alleged violation of any act administered by the Commission, arising out of acts or transactions involving meat, meat food products, livestock products in unmanufactured form, or poultry products, if the Commission determines that effective exercise of its power or jurisdiction with respect to retail sales of any such commodities is or will be impaired by the absence of power or jurisdiction over all acts or transactions involving such commodities in such investigation or proceeding. In order to avoid unnecessary duplication of effort by the Government and burdens upon the industry, the Commission shall notify the Secretary of such determination, the reasons therefor, and the acts or transactions involved, and shall not exercise power or jurisdiction with regard to acts or transactions (other than retail sales) involving such commodities if the Secretary within 10 days from the date of receipt of the notice notifies the Commission that there is pending in his Department an investigation of, or proceeding for the prevention of, an alleged violation of this act involving the same subject matter.

¹³ Amended by an act of Congress, approved Sept. 2, 1958.

(3) Over all transactions in commerce in margarine or oleomargarine and over retail sales of meat, meat food products, livestock products in unmanufactured form and poultry products.

(c) The Federal Trade Commission shall have no power or jurisdiction over any matter which by this act is made subject to the jurisdiction of the Secretary, except as provided in subsection (b) of this section.

(d) The Secretary of Agriculture shall exercise power or jurisdiction over oleomargarine or retail sales of meat, meat food products, livestock products in unmanufactured form, or poultry products only when he determines, in any investigation of, or any proceeding for the prevention of, an alleged violation of this act, that such action is necessary to avoid impairment of his power or jurisdiction over acts or transactions involving livestock, meat, meat food products, livestock products in unmanufactured form, poultry or poultry products, other than retail sales thereof. In order to avoid unnecessary duplication of effort by the Government and burdens upon the industry, the Secretary shall notify the Federal Trade Commission of such determination, the reasons therefor, and the acts or transactions involved, and shall not exercise power or jurisdiction with respect to acts or transactions involving oleomargarine or retail sales of meat, meat food products, livestock products in unmanufactured form, or poultry products if the Commission within 10 days from the date of receipt of such notice notifies the Secretary that there is pending in the Commission an investigation of, or proceeding for the prevention of, an alleged violation of any act administered by the Commission involving the same subject matter.

(e) The Secretary of Agriculture and the Federal Trade Commission shall include in their respective annual reports information with respect to the administration of subsections (b) and (d) of this section. (7 U.S.C. 227.)

Sec. 407.¹⁴ (a) The Secretary may make such rules, regulations, and orders as may be necessary to carry out the provisions of this Act and may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees, not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, telegrams, telephones, law books, books of reference, periodicals, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, and as may be appropriated for by Congress, and there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for such purpose.

(b) The Secretary shall maintain within the Department of Agriculture a separate enforcement unit to administer and enforce title II of this act.

¹⁴ Amended by acts of Congress, approved Sept. 2, 1958, and July 8, 1963.

(c) Notwithstanding any other provision of law, the authority of the Secretary under this Act shall not apply to deductions made from sales proceeds for the purpose of financing promotion and research activities, including educational activities relating to livestock, meat, and other products covered by the Act. (7 U.S.C. 228.)

Sec. 408. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby. (7 U.S.C. 229.)

TITLE V—LIVE POULTRY DEALERS AND HANDLERS¹⁵

Sec. 501. The handling of the great volume of live poultry required as an article of food for the inhabitants of large centers of population is attendant with various unfair, deceptive, and fraudulent practices and devices, resulting in the producers sustaining sundry losses and receiving prices far below the reasonable value of their live poultry in comparison with prices of other commodities and in unduly and arbitrarily enhancing the cost to the consumers. Such practices and devices are an undue restraint and unjust burden upon interstate commerce and are a matter of such grave concern to the industry and to the public as to make it imperative that steps be taken to free such commerce from such burden and restraint and to protect producers and consumers against such practices and devices. (U.S.C. 218.)

Sec. 502. (a) The Secretary of Agriculture is authorized and directed to ascertain from time to time and to designate the cities where such practices and devices exist to the extent stated in the preceding section and the markets and places in or near such cities where live poultry is received, sold, and handled in sufficient quantity to constitute an important influence on the supply and price of live poultry and poultry products. On and after the effective date of such designation, which shall be publicly announced by the Secretary by publication in one or more trade journals or in the daily press or in such other manner as he may determine to be adequate for the purpose approximately thirty days prior to such date, no person other than packers as defined in title II of said Act and railroads shall engage in, furnish, or conduct any service or facility in any such designated city, place, or market in connection with the receiving, buying, or selling, on a commission basis or otherwise, marketing, feeding, watering, holding, delivering, shipping, weighing, unloading, loading on trucks, trucking, or handling in commerce of live poultry without a license from the Secretary of Agriculture as herein authorized valid and effective at such time. Any person who violates any provision of this subsection shall be subject to a fine of not more than \$500 or imprisonment of not more than six months, or both.

(b) Any person desiring a license shall make application to the Secretary, who may by regulation prescribe the information to be contained in such application. The Secretary shall issue a license to any applicant furnishing the required information unless he finds

¹⁵ Amended by an act of Congress, approved Aug. 14, 1935.

after opportunity for a hearing that such applicant is unfit to engage in the activity for which he has made application by reason of his having at any time within two years prior to his application engaged in any practice of the character prohibited by this Act or because he is financially unable to fulfill the obligations that he would incur as a licensee. (7 U.S.C. 218a.)

Sec. 503. Sections 202, 401, 402, 403, and 404 of said Act are amended by the addition of the words "or any live poultry dealer or handler" after the word "packer" wherever it occurs in said sections. The term "live poultry dealer" means any person engaged in the business of buying or selling live poultry in commerce for purposes of slaughter either on his own account or as the employee or agent of the vendor or purchaser. (7 U.S.C. 218b.)

Sec. 504. The provisions of sections 305 to 316, both inclusive, 401, 402, 403, and 404 of said Act shall be applicable to licensees with respect to services and facilities covered by this title and the rates, charges, and rentals therefor except that the schedule of rates, charges and rentals shall be posted in the place of business of the licensee as prescribed in regulations made by the Secretary. (7 U.S.C. 218c.)

Sec. 505. Whenever the Secretary determines, after opportunity for a hearing, that any licensee has violated or is violating any of the provisions of this title, he may publish the facts and circumstances of such violation and by order suspend the license of such offender for a period not to exceed ninety days and if the violation is flagrant or repeated he may by order revoke the license of the offender. (7 U.S.C. 218d.)

EXTRACTS FROM FEDERAL TRADE COMMISSION ACT

An Act To Create a Federal Trade Commission, To Define Its Powers and Duties, and for Other Purposes

* * * * *

Sec. 4. The words defined in this section shall have the following meaning when found in this Act, to wit:

"Commerce" means commerce among the several States or with foreign nations or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

"Corporation" shall be deemed to include any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, which is organized to carry on business for its own profit or that of its members, and has shares of capital or capital stock or certificates of interest, and any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, without shares of capital or capital stock or certificates of interest, except partnerships, which is organized to carry on business for its own profit or that of its members.

"Documentary evidence" includes all documents, papers, correspondence, books of account, and financial and corporate records.

"Acts to regulate commerce" means the Act entitled "An Act to regulate commerce", approved February 14, 1887, and all Acts amendatory thereof and supplementary thereto and the Communications Act of 1934 and all Acts amendatory thereof and supplementary thereto.

"Antitrust Acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890; also sections 73-77, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894; also the Act entitled "An Act to amend sections 73 and 76 of the Act of August 27, 1894, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes'", approved February 12, 1913; and also the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914. Sept. 26, 1914, c. 311, § 4, 38 Stat. 719; Oct. 15, 1914, c. 323, § 1, 38 Stat. 730; Mar. 21, 1938, c. 49, § 2, 52 Stat. 111. (15 U.S.C. 44.)

* * * * *

Sec. 6. That the Commission shall also have power—

(a) To gather and compile information concerning and, to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

(b) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the Commission in such form as the Commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commission may prescribe, and shall be filed with the Commission within such reasonable period as the Commission may prescribe, unless additional time be granted in any case by the Commission.

(c) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the Commission.

(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust acts by any corporation.

(e) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such forms and manner as may be best adapted for public information and use.

(g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable. (15 U.S.C. 46.)

* * * * *

Sec. 8. That the several departments and bureaus of the Government when directed by the President shall furnish the Commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and shall detail from time to time such officials and employees to the Commission as he may direct. (15 U.S.C. 48.)

Sec. 9. That for the purposes of this Act the Commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the Commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the Commission may sign subpoenas, and members and examiners of the Commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person,

issue an order requiring such corporation or other person to appear before the Commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the Commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the Commission made in pursuance thereof.

The Commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

No person shall be excused from attending and testifying or from producing documentary evidence before the Commission or in obedience to the subpoena of the Commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the Commission in obedience to a subpoena issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying. (15 U.S.C. 49.)

Sec. 10. That any person who shall neglect or refuse to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the Commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act or who shall willfully neglect or fail to make, or to

cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the Commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the Commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the Commission who shall make public any information obtained by the Commission without its authority, unless directed by the court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment, not exceeding one year, or by fine and imprisonment, in the discretion of the court. (15 U.S.C. 50.)

Sec. 11. Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust acts or the acts to regulate commerce, nor shall anything contained in the Act be construed to alter, modify, or repeal the said antitrust acts or the acts to regulate commerce or any part or parts thereof. (15 U.S.C. 51.)

REGULATIONS OF THE SECRETARY OF AGRICULTURE PROMULGATED UNDER THE PACKERS AND STOCKYARDS ACT, 1921, AS AMENDED

DEFINITIONS		201.18	Requirements as to filing by licensees.
Sec.		201.19	Size, style, and number of copies.
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POSTING STOCKYARDS		201.26	Form.
201.5	Investigation, notice, and posting of stockyards.	GENERAL BONDING PROVISIONS	
201.6	Investigation, notice, and depositing of stockyards.	201.27	Underwriter; substantial equivalents in lieu of bonds.
201.7	Change in name, address, management, control, or ownership to be reported by stockyard owner.	201.28	Duplicates of bonds or equivalents to be filed with the Director, Washington, D.C.
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201.9	Publication.	201.30	Amount of market agency and dealer bonds.
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201.10	Requirements and procedures.	201.32	Trustee in market agency and dealer bonds.
201.11	Officers, agents, and employees of registrants whose registrations have been suspended or revoked.	201.33	Persons damaged may maintain suit to recover on market agency and dealer bonds.
201.12	Registrants whose registrations have been suspended or revoked.	201.34	Termination of market agency and dealer bonds.
201.13	Registrants to report changes in name, address, control, or ownership.	LICENSEE BONDS	
LICENSING		201.35	Standards for bonds submitted by applicants for licenses and licensees.
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201.15	Licensee must maintain satisfactory financial condition or furnish surety bond or equivalent.	201.37	Persons damaged may maintain suit to recover on licensee bonds.
201.16	Licensee to report changes in name, address, control, or ownership.	201.38	Termination of licensee bonds.
SCHEDULES OF RATES AND CHARGES		PROCEEDS OF SALE	
201.17	Requirements as to filing by stockyard owners and market agencies operating at a stockyard; use of term "yardage" in stockyard schedules.	201.39	Payment to be made to consignor or shipper by market agencies and licensees; exceptions.

- 201.40 Market agencies and licensees not to use shippers' proceeds or funds received for purchases on commission for own purposes through "bank float" or otherwise.
- 201.41 Market agencies and licensees to make faithful and prompt accounting to consignors or shippers or other interested persons of whom they have knowledge.
- 201.42 Custodial accounts.

ACCOUNTS AND RECORDS

- 201.43 Market agencies and licensees to make prompt accounting and transmittal of net proceeds.
- 201.44 Market agencies and licensees to render prompt accounting for purchases on order.
- 201.45 Market agencies and licensees to make records available for inspection by owners, consignors, and purchasers.
- 201.46 Stockyard owners, market agencies, dealers, and licensees to keep daily record.
- 201.47 Market agencies and licensees to disclose business relationships, if any, with purchasers.
- 201.48 Sellers of live poultry to issue sales tickets at designated markets.
- 201.49 Requirements regarding scale tickets evidencing weighing of livestock or live poultry.
- 201.50 Records; disposition.
- 201.51 Contracts; stockyard owners to furnish copies of.
- 201.52 Information as to sales on commission or agency basis not to be furnished to unauthorized parties.
- 201.59 Taking consignments into own account; accounting; resales.
- 201.60 Consignments on commission; sale of livestock.
- 201.61 Market agencies engaged in selling or purchasing livestock on commission.
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- 201.63 Consignments; when not to be solicited or intercepted.
- 201.64 Consignments; guaranties not to be given.
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- 201.66 Market agencies not to employ packers or dealers.
- 201.67 Packers or dealers not to own or finance selling agencies.
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- 201.71 Accurate weights.
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- 201.73 Scale operators to be competent.
- 201.74 Scales; reports of tests and inspections.
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- 201.78 Packer scales.
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- 201.80 Stockyard facilities or services to be furnished only to unsuspended, properly registered, and bonded parties.
- 201.81 Suspended or revoked registrants or licensees.
- 201.82 Livestock; care and promptness in yarding, feeding, watering, weighing, and handling.
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- 201.53 Livestock and live poultry market conditions and prices; persons subject to act not to circulate misleading reports.
- 201.54 Gratuities.
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INSPECTION OF BRANDS	GENERAL
201.86 Application for authorization by State agencies and duly organized State livestock associations; requisites.	201.94 Information as to business; furnishing of by packers, stockyard owners, market agencies, dealers, and licensees.
201.87 Two or more applications from same State; procedure.	201.95 Inspection of records and property of packers, stockyard owners, market agencies, dealers, and licensees.
201.88 Registration and filing of schedules.	201.96 Packers, stockyard owners, market agencies, dealers, or licensees; information concerning business not to be divulged.
201.89 Records of authorized agencies or associations.	201.97 Annual reports.
201.90 Fees; deduction and accounting.	201.98 Packers and dealers not to charge, demand, or collect commission, yardage, or other service charges.
201.91 Inspections; reciprocal arrangements by authorized agencies or associations.	AUTHORITY: §§ 201.1 to 201.98 issued under sec. 407, 42 Stat. 169; 7 U.S.C. 228.
201.92 Maintenance of identity of consignments; inspection to be expedited.	
201.93 Existing contracts between authorized agencies; recognition and continuation.	

DEFINITIONS

§ 201.1 *Meaning of words.* Words used in these regulations in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 201.2 *Terms defined.* The definitions of terms contained in the act shall apply to such terms when used in these regulations. In addition, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

(a) "Act" means the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. 181 et seq.).

(b) "Department" means the United States Department of Agriculture.

(c) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) "Service" means the Agricultural Marketing Service of the Department.

(e) "Administrator" means the Administrator of the Service or any person authorized to act in his stead.

(f) "Deputy Administrator" means the Deputy Administrator, Regulatory Programs, of the Service or any person authorized to act in his stead.

(g) "Packers and Stockyards Division" means the Packers and Stockyards Division of the Service.

(h) "Director" means the Director of the Packers and Stockyards Division or any person authorized to act in his stead.

(i) "Area Supervisor" means the Area Supervisor of the Division for a given area or any person authorized to act in his stead.

(j) "Person" means individuals, partnerships, corporations, and associations.

(k) "Registrant" means any person registered pursuant to the provisions of the act and these regulations.

(l) "Licensee" means any person licensed pursuant to the provisions of the act and these regulations.

(m) "Stockyard" means a livestock market determined by the Secretary to come within the definition of the term "stockyard" contained in section 302 of the act, notice of which determination shall have been given pursuant to such section.

(n) "Designation" means the designation of a city, and the markets and places in or near such city, pursuant to the provisions of title V of the act.

(o) "Schedule" means a tariff of rates and charges filed by stockyard owners, market agencies, and licensees.

ADMINISTRATION

§ 201.3 Authority. The Administrator shall perform such duties as the Secretary may require in enforcing the provisions of the act and these regulations.

APPLICABILITY OF INDUSTRY RULES

§ 201.4 Bylaws, rules and regulations, and requirements of exchanges, associations, or other organizations; applicability, establishment. (a) These regulations shall not prevent the legitimate application or enforcement of any valid bylaw, rule or regulation, or requirement of any exchange, association, or other organization, or any other valid law, rule or regulation, or requirement to which any packer, stockyard owner, market agency, dealer, or licensee shall be subject which is not inconsistent or in conflict with the act and these regulations.

(b) Market agencies selling livestock on commission shall not, in carrying out the statutory duty imposed upon them by section 307 of title III of the act, permit dealers, packers, or others representing interests which conflict with those of consignors, to participate, directly or indirectly, in determination of the need for, or in the establishment of, regulations governing, or practices relating to, the responsibilities, duties, or obligations of such market agencies to their consignors.

POSTING STOCKYARDS

§ 201.5 Investigation, notice, and posting of stockyards. After it has been determined, as provided in section 302(b) of the act, that a stockyard comes within the definition of that term contained in section 302(a), posting of a stockyard shall be accomplished by (a) giving notice of such determination to the stockyard owner by certified mail or in person, and (b) giving notice thereof to the public by posting copies of such notice in at least three conspicuous places at such stockyard and by publication of the determination in the Federal Register. A stockyard so posted shall remain subject to the provisions of the act and these regulations until the stockyard has been deposted.

§ 201.6 Investigation, notice, and deposing of stockyards. After it has been determined, as provided in section 302(b) of the act,

that a stockyard no longer comes within the definition of that term contained in section 302(a), deposing of a stockyard shall be accomplished by (a) giving notice of such determination to the stockyard owner by certified mail or in person, and (b) giving notice thereof to the public by posting copies of such notice in at least three conspicuous places at such stockyard and by publication of the determination in the Federal Register.

§ 201.7 *Change in name, address, management, control, or ownership to be reported by stockyard owner.* Whenever any change is made in the name or address or in the management or nature or in the substantial control or ownership of the business of a stockyard, the owner of such stockyard shall report such change in writing to the Director, at Washington, D.C., within ten days after making such change.

DESIGNATION OF LIVE POULTRY MARKETS

§ 201.8 *Investigation.* Such investigation as may be deemed necessary for the purpose of ascertaining whether a city, and markets and places in or near such city, shall be designated under title V of the act shall be made by the Service.

§ 201.9 *Publication.* After it has been determined by the Secretary that a city, and markets and places in or near such city, should be designated under the provisions of title V of the act, public announcement thereof shall be made by publication in the Federal Register and one or more trade journals or newspapers.

REGISTRATION

§ 201.10 *Requirements and procedures.* (a) Every person operating or desiring to operate as a market agency or dealer as defined in section 301 of the act shall apply for registration under the act by filing, on forms which will be supplied by the Director or any Area Supervisor on request, a properly executed application containing all the information required by such forms, and shall, concurrently with the filing of such application, file the bond required in § 201.29.

(b) Each application for registration shall be filed with the Area Supervisor, for the area in which the applicant proposes to operate, who shall mail it to the Director at Washington, D.C. If the Director has reason to believe that the applicant is unfit to engage in the activity for which application has been made by reason of the fact that the applicant has within two years prior to filing the application engaged in activities constituting dishonest or fraudulent practices of the character prohibited by the act which previously have not been the subject of a formal administrative proceeding under the act resulting in the imposition of a sanction against the applicant, he promptly shall cause an administrative proceeding to be instituted in which the applicant will be afforded opportunity for full hearing in accordance with the Rules of Practice under the act, for the purpose of showing cause why the application for registration should not be denied. In the event it is determined that the application should be denied, the

applicant shall not be precluded as soon as conditions warrant from again applying for registration.

(c) Any person regularly employed on salary, or other comparable method of compensation, by a packer to buy livestock for such packer shall be subject to the registration requirements of the act and these regulations. Such persons shall be registered as dealers to purchase livestock for slaughter only.

(d) No person applying for registration to engage in business as a market agency selling livestock on an agency basis shall be registered to act in the capacity of clearing agency for any independently operated and separately registered market agency or dealer. No market agency engaged in selling livestock on an agency basis shall act in the capacity of clearing agency for any independently operated and separately registered market agency or dealer.

§ 201.11 *Officers, agents, and employees of registrants whose registrations have been suspended or revoked.* Any person who has been or is an officer, agent, or employee of a registrant whose registration has been suspended or revoked and who was responsible for or participated in the violation on which the order of suspension or revocation was based may not register within the period during which the order of suspension or revocation is in effect.

§ 201.12 *Registrants whose registrations have been suspended or revoked.* Any person whose registration has been suspended or revoked may not again register in his own name or in any other manner within the period during which the order of suspension or revocation is in effect, and no partnership, firm, or corporation in which any such person has a substantial financial interest will be registered during such period.

§ 201.13 *Registrants to report changes in name, address, control, or ownership.* Whenever any change is made in the name or address or in the management or nature or in the substantial control or ownership of the business of a registrant, such registrant shall report such change in writing to the Director at Washington, D.C., within ten days after making such change.

LICENSING

§ 201.14 *Requirements and procedures.* An application for a license pursuant to section 502(b) of the act may be made by any person subject to the licensing provisions of the act by properly filling out and delivering to the Director at Washington, D.C., by mail or otherwise, a properly executed form of application. Copies of such form will be furnished by the Director on request. A license will be issued to any applicant furnishing the required information unless the Secretary finds after opportunity for hearing that such applicant is unfit to engage in the activity for which he has made application by reason of his having at any time within two years prior to his application engaged in any practice of the character prohibited by the act or because he is financially unable to fulfill the obligations he would incur as a licensee. Financial ability may be established upon a showing by the applicant that he has current assets equal to his current liabilities, and, in addition thereto, sufficient free working capital

to equal twenty-five (25) percent of his average weekly purchases and sales of live poultry according to his books and records or according to such volume of business as may be reasonably anticipated in case of a new business. If the applicant fails to make such a showing, consideration will be given to a showing of other assets and other liabilities and other factors relating to his ability to fulfill his financial obligations which would be incurred as a licensee and to his reputation and integrity. If the applicant fails to make a satisfactory showing of financial ability, a license will be granted upon his executing and maintaining a satisfactory surety bond or equivalent thereof to a suitable trustee, in accordance with the provisions of §§ 201.35 to 201.38, inclusive.

§ 201.15 *Licensee must maintain satisfactory financial condition or furnish surety bond or equivalent.* The granting of a license hereunder is conditioned on the licensee maintaining at all times a financial condition at least equivalent to that required for the issuance of a license or in lieu thereof maintaining a satisfactory surety bond or its equivalent. The failure of a licensee to maintain such a financial condition or surety bond will render his license subject to suspension or revocation.

§ 201.16 *Licensee to report changes in name, address, control, or ownership.* Whenever any change is made in the name or address or in the management or nature or in the substantial control or ownership of the business of a licensee, such licensee shall report such change in writing to the Director at Washington, D.C., within ten days after making such change.

SCHEDULES OF RATES AND CHARGES

§ 201.17 *Requirements as to filing by stockyard owners and market agencies operating at a stockyard; use of term "yardage" in stockyard schedules.* (a) Each stockyard owner and market agency operating at a stockyard shall plainly state in the schedule of rates and charges filed by the stockyard owner or market agency the effective date of the schedule, a description of the services rendered, the basis for classifying livestock by species or by weight, the stockyards at which the schedule applies, the name and business address of the stockyard owner or market agency, the kind of livestock covered by the schedule, and the conditions under which the services will be rendered and the rates or charges will be applied.

(b) The term "yardage" shall be used in schedules of rates and charges filed by stockyard owners on and after September 1, 1954, to describe the basic stockyard facilities and services furnished, and shall, unless otherwise indicated therein, include: the use of suitable facilities for the safe and expeditious receiving, handling, feeding, watering, holding, sorting, selling, buying, weighing, delivery, and shipment of livestock; the services necessary and incident to the receiving of livestock at the place of unloading; the furnishing of receipts for livestock to the carrier or consignor; the delivery of livestock to the consignee; the obtaining of receipts evidencing delivery of livestock to the sales pens assigned to the consignee; the furnishing of sufficient potable water for livestock; the initial weighing of livestock

when sold and delivered to scales; the issuance of scale tickets showing actual weight and other pertinent information concerning the live-stock weighed; the removal of livestock from scales after weighing and delivery to holding pens; the holding of livestock for a reasonable time pending delivery or shipment to buyers; the delivery of live-stock to buyers; and the obtaining of receipts for livestock delivered to buyers. Consignors, market agencies, dealers, packers, buyers, or other users of stockyard facilities and services requiring special facilities or services in addition to the basic facilities and services furnished at the stockyard may be required to pay a reasonable charge for such special facilities and services in addition to basic yardage charges.

§ 201.18 *Requirements as to filing by licensees.* Each licensee furnishing services or providing facilities for which a charge is made shall plainly state in the schedule of rates and charges filed by such licensee the effective date of the schedule, the city, place, or market at which the schedule applies, the name and business address of the licensee, the nature of the services or facilities furnished and the terms or conditions under which the services or facilities will be furnished and the rates and charges will be applied.

§ 201.19 *Size, style, and number of copies.* Schedules of rates and charges and amendments thereto of stockyard owners, market agencies operating at a stockyard, and licensees shall be printed or typed on paper which is approximately 8 by 11 inches in size, the lines of print or type being horizontal to the 8-inch dimension. Three copies of each such schedule or amendment, one copy of which shall be signed by the stockyard owner, market agency, or licensee filing the same, shall be filed as provided in § 201.22.

§ 201.20 *Numbering, arrangement, and substance of schedules and amendments.* The schedules of each stockyard owner, market agency operating at a stockyard, and licensee shall be designated by successive numbers as filed. Each such schedule shall be divided into sections to cover the various classes of services or facilities furnished by the stockyard owner, market agency, or licensee. Each amendment of such schedule shall be numbered and shall show the number of the schedule of which it is an amendment. Each such amendment shall in its body make adequate reference to the sections of the schedule which are amended, and shall set forth in full such sections as amended or supplemented. Each amendment shall indicate the numbers of the amendments to the original schedule that remain in effect. After a stockyard owner, market agency, or licensee has filed thirty (30) amendments to its schedule, any further changes in the rates or charges shall be embodied in a new schedule which shall contain all rates and charges then in effect: *Provided, however,* That not more than ten (10) amendments relating to charges other than for feed may be filed without filing and publishing a new schedule.

§ 201.21 *Rules or regulations affecting rates and charges.* Each stockyard owner, market agency operating at a stockyard, and licensee shall set out in its schedule of rates and charges every rule or regulation which in any way changes or affects any rate or charge or the value of the services furnished thereunder and shall designate the rates or charges affected by each such rule or regulation.

§ 201.22 *Time and place stockyard owners, market agencies, and licensees are to file schedules and amendments.* Duplicate copies of all schedules and rules or regulations and amendments or supplements thereto required to be filed under the act by market agencies and stockyard owners shall be kept open for public inspection at their places of business. Licensees shall post duplicate copies of all schedules of rates, charges, and rentals in a conspicuous location in their places of business where they may be readily observed by any interested person. Unless the requirement as to filing and notice is specifically waived, as provided for in section 306(c) of the act, all amendments to schedules or rules or regulations changing a rate or charge shall be filed with the Director at Washington, D.C., not less than ten (10) days before the effective date thereof: *Provided, however,* That in the case of a tariff supplement which relates only to changes in feed charges, determined on a cost plus specified margin basis as provided for in the basic tariff schedule of the stockyard involved, such tariff supplement shall be filed with supporting data, disclosing the average cost of the feed on hand, with the Area Supervisor for the area in which the stockyard filing the supplement is located, and such supplement shall become effective two (2) days thereafter.

§ 201.23 *Joint schedules.* If the same schedule is to be observed by more than one market agency or licensee, one schedule will suffice for all market agencies or licensees at any one stockyard, city, place, or market observing it whose names and business addresses are shown on it, together with the name of the organization, if any, by which adopted: *Provided,* That at least one copy of such schedule or amendment thereto is signed in ink by each of the market agencies or licensees observing the same and is filed with the Director at Washington, D.C., and each market agency and licensee complies with the posting requirements of § 201.22.

§ 201.24 *Prescribed rates, charges, practices, and regulations.* After the effective date of any general order issued by the Secretary prescribing rates, charges, practices, or regulations governing the rendition of stockyard services or the selling or buying of livestock on a commission basis at a stockyard, or governing the rendition of any service or the use of any facilities in a city, place, or market, designated by the Secretary under title V of the act, every market agency operating at such stockyard and every licensee operating in such city, place, or market shall conform to such order.

§ 201.25 *Proposed increases in existing charges must be supported by specific data.* Each stockyard owner, market agency, and licensee proposing an increase in existing charges, either by supplement or amendment to a filed tariff or by submission of a new tariff, shall forward with the supplement, amendment, or tariff proposing the increase information as to reasons for the proposed increase and shall furnish specific and detailed data on which the proposed increase is based together with such additional information as the Director may require.

§ 201.26 Form. The schedules of each stockyard owner, market agency operating at a stockyard, and licensee shall be substantially in the form set out below:

Tariff No. -----or

Amendment No. ----- to Tariff No. -----
of

(Operator's Name)

(Operator's Business Address)
to apply at

(Name of Posted Yard or Designated Market)

(Location of Posted Yard or Designated Market)

Issued ----- Effective -----
(Not less than ten days after receipt in Washington Office)
(Insert here, dividing into sections, the various classes of service performed by the stockyard owner or operator, market agency or licensee, the kind of livestock or poultry concerning which services are performed, the nature of the services, and the terms or conditions under which the services are rendered.)

(Operator's Name)

(Signed by) -----
(Owner, Partner, or Official Designation)

GENERAL BONDING PROVISIONS

§ 201.27 Underwriter; substantial equivalents in lieu of bonds. The surety on bonds maintained under §§ 201.29 to 201.38 shall be a surety company approved by the United States Treasury Department for bonds executed to the United States. Except as otherwise provided in § 201.29, any other form of indemnity which is found by the Director to afford protection substantially equivalent to that of a surety bond may be accepted in lieu of a bond. The requirements of §§ 201.28 to 201.38 shall be applicable to equivalents furnished in lieu of bonds.

§ 201.28 Duplicates of bonds or equivalents to be filed with the Director, Washington, D.C. Fully executed duplicates of bonds or equivalents maintained under §§ 201.29 to 201.38 shall be filed with the Director at Washington, D.C.

MARKET AGENCY AND DEALER BONDS

§ 201.29 Market agencies and dealers to file on or before commencing operations. Every market agency and dealer, except packer buyers registered as dealers to purchase livestock for slaughter only, shall, on or before the date of commencement of operations, execute and thereafter maintain, or cause to be executed and thereafter maintained, a reasonable bond, to a suitable trustee, to secure the performance of obligations incurred as such market agency or dealer: *Provided*, That the only bond equivalent that may be filed by an applicant

for registration to operate as a market agency selling livestock on an agency basis and, with the exception of those bond equivalents which were in effect on September 1, 1957, the only bond equivalent that may be filed or maintained by a market agency selling livestock on an agency basis shall be one representing a pledge of fully negotiable bonds of the United States Government. The bond of every registrant, acting in the capacity of clearing agency, and thereby being responsible for the financial obligations of other registrants, shall show the name of the person for whom the clearing agency holds itself out to be responsible and whose obligations are covered by the bond. Any person registered as both a market agency selling livestock on an agency basis and as a dealer shall file separate bonds to cover his market agency and dealer operations. The amount of each such bond will be computed on the basis of the volume of business handled by the registrant in each separate capacity.

§ 201.30 Amount of market agency and dealer bonds. Except as hereinafter otherwise provided, the amount of each market agency and dealer bond shall be not less than the nearest multiple of one thousand dollars (\$1,000) above the average amount of sales or purchases, or both, of livestock by such market agency or dealer during a period equivalent to two business days, based on the total number of the business days, and the total amount of such sales or purchases, or both, in the preceding 12 months, or in such part thereof in which such market agency or dealer did business, if any. For the purpose of this computation, 260 shall be deemed the number of business days in any year. When the principal part of the livestock handled by a market agency or dealer is sold or purchased at public auction, the amount of the bond shall be not less than the nearest multiple of one thousand dollars (\$1,000) above an amount determined by dividing the total value of the livestock sold or purchased, or both, during the preceding 12 months, or such part thereof as the market agency or dealer was engaged in business, by the actual number of auction sales at which livestock was sold or purchased by the market agency or dealer, but in no instance shall the divisor be greater than 130. In no case shall the amount of bond be less than five thousand dollars (\$5,000). When the sales or purchases, or both, calculated as hereinbefore specified, exceed fifty thousand dollars (\$50,000) the amount of the bond need not exceed fifty thousand dollars (\$50,000) plus ten (10) percent of the excess. Whenever the Director finds any bond required by §§ 201.29 to 201.34 to be inadequate, such bond upon notice, shall be adjusted to meet the requirements of this section. If a person applying for registration as a market agency or dealer has been engaged in the business of handling livestock in such capacity prior to the date of the application, the value of the livestock so handled, if representative of his future operations, shall be used in computing the amount of bond in accordance with the provisions of this section.

§ 201.31 Conditions in market agency and dealer bonds. Each market agency and dealer bond shall contain conditions applicable to the activity or activities in which the person or persons named as principal in the bond propose to engage, which conditions shall be as follows or in terms to provide equivalent protection.

(a) When the principal sells on commission:

If the said principal shall safely keep and faithfully and promptly account for and pay to the owners or their duly authorized agents the proceeds of sales of all livestock received for sale on a commission basis by the said principal.

(b) When the principal buys on commission:

If the said principal shall faithfully and promptly execute all orders for purchases of livestock undertaken by said principal on a commission basis, on behalf of buyers, and shall safely keep and properly disburse all funds coming into the hands of said principal for the purpose of making such livestock purchases, paying for all livestock so purchased.

(c) When the principal operates as a dealer (trader):

If the said principal shall pay, when due, to the person or persons entitled thereto the purchase price for all livestock purchased by said principal.

(d) When the principal "clears" and thus is responsible for the obligations of other registrants:

If the said principal, acting in the capacity of broker or clearing agency, and thereby being responsible for the financial obligations of other registrants, viz: (insert here the names of such registrants) ----- shall (1) pay, when due, to the person or persons entitled thereto the purchase price for all livestock purchased by such other registrants; (2) safely keep and properly disburse all funds coming into the hands of said principal for the purpose of making such purchases; and (3) safely keep and faithfully and promptly account for and pay to the owners or their duly authorized agents the proceeds of sales of all livestock received for sale on a commission basis by such other registrants for whom said principal acts as broker or clearing agency.

§ 201.32 *Trustee in market agency and dealer bonds.* Bonds shall be in favor of a financially responsible, disinterested trustee, satisfactory to the Director. Secretaries or other officers of livestock exchanges or of similar trade associations, and banks and trust companies, or their officers, are deemed suitable trustees.

§ 201.33 *Persons damaged may maintain suit to recover on market agency and dealer bonds.* Each bond shall contain a provision that any person damaged by failure of the principal to comply with the condition clauses of the bond may maintain suit to recover on the bond even though such person is not a party named in the bond.

§ 201.34 *Termination of market agency and dealer bonds.* Each bond shall contain a provision requiring that at least thirty days' notice in writing be given to the Director at Washington, D.C., by the party terminating such bond in order to effect its termination.

LICENSEE BONDS

§ 201.35 *Standards for bonds submitted by applicants for licenses and licensees.* Surety bonds submitted by applicants for licenses and by licensees as provided for by §§ 201.14 and 201.15 shall meet the following standards:

(a) Each licensee bond shall contain conditions applicable to the activity or activities in which the person or persons named as prin-

principal in the bond propose to engage, which conditions shall be as follows or in terms to provide equivalent protection.

(1) When the applicant or licensee sells live poultry on a commission or agency basis, the bond shall contain the following clause:

If the said principal shall safely keep and faithfully and promptly account for and pay to the owners or their duly authorized agents the proceeds of sales of all live poultry received for sale on a commission basis by the said principal in his capacity as a licensee.

(2) When the applicant or licensee operates as a dealer, the bond shall contain the following clause:

If the said principal shall pay when due, to the person or persons entitled thereto the purchase price of all live poultry purchased by said principal in his capacity as a licensee.

(b) The amount of such bond shall be at least equal to the amount by which the applicant or licensee has failed to meet the financial requirements of these regulations.

§ 201.36 *Trustee in licensee bonds.* Bonds shall be in favor of a financially responsible, disinterested trustee, satisfactory to the Director. Secretaries of trade associations, and banks and trust companies, or their officers, are deemed suitable trustees.

§ 201.37 *Persons damaged may maintain suit to recover on licensee bonds.* Each bond shall contain a provision that any person damaged by failure of the principal to comply with the condition clauses of the bond may maintain suit to recover on the bond even though such person is not a party named in the bond.

§ 201.38 *Termination of licensee bonds.* Each bond shall contain a provision requiring that at least ten days' notice in writing be given to the Director at Washington, D.C., by the party terminating such bond in order to effect its termination.

PROCEEDS OF SALE

§ 201.39 *Payment to be made to consignor or shipper by market agencies and licensees; exceptions.* (a) No market agency or licensee shall, except as provided in paragraph (b) of this section, pay the net proceeds or any part thereof, arising from the sale of livestock or live poultry consigned to it for sale, to any person other than the consignor or shipper of such livestock or live poultry except upon an order from the Secretary or a court of competent jurisdiction, unless (1) such market agency or licensee has reason to believe that such person is the owner of the livestock or live poultry, (2) such person holds a valid, unsatisfied mortgage or lien upon the particular livestock or live poultry, or (3) such person holds a written order authorizing such payment executed by the owner at the time of or immediately following the consignment of such livestock or live poultry: *Provided*, That this paragraph shall not apply to deductions made from sales proceeds for the purpose of financing promotion and research activities, including educational activities, relating to livestock, meat, and other products covered by the Act, carried out by producer-sponsored organizations.

(b) The net proceeds arising from the sale of livestock, the ownership of which has been questioned by a market agency duly authorized

to inspect brands, marks, and other identifying characteristics of livestock may be paid in accordance with the directions of such brand inspection agency if the laws of the State from which such livestock originated or was shipped to market make provision for payment of the proceeds in the manner directed by the brand inspection agency and if the market agency to which the livestock was consigned, and the consignor or consignors concerned, are unable to establish the ownership of the livestock within a reasonable period of time, not to exceed 60 days after sale.

§ 201.40 *Market agencies or licensees not to use shippers' proceeds or funds received for purchases on commission for own purposes through "bank float" or otherwise.* No market agency or licensee engaged in selling or buying livestock or live poultry on a commission or agency basis shall use shippers' proceeds or funds received for the purchase of livestock or live poultry on order for purposes of its own either through recourse to the so-called "float" in the bank account in which the proceeds or funds are deposited or in any other manner.

§ 201.41 *Market agencies and licensees to make faithful and prompt accounting to consignors or shippers or other interested persons of whom they have knowledge.* No market agency or licensee shall make such use or disposition of funds in its possession or control as will endanger or impair the faithful and prompt accounting for and payment of such portion thereof as may be due the consignor or shipper of livestock or live poultry or other persons having an interest therein of which interest such market agency or licensee has knowledge.

§ 201.42 *Custodial accounts.* (a) Every market agency and licensee shall deposit the gross proceeds received from the sale of livestock or live poultry handled on a commission or agency basis in a separate bank account designated as "Custodial Account for Shippers' Proceeds," or by a similar identifying designation. Such account shall be drawn on only for payment of the net proceeds to the consignor or shipper, or such other person or persons who such market agency or licensee has knowledge is entitled thereto, and to obtain therefrom the sums due the market agency or licensee as compensation for its services, and for such sums as are necessary to pay all legal charges against the consignment of livestock or live poultry which the market agency or licensee may, in its capacity as agent, be required to pay for and on behalf of the consignor or shipper. The market agency or licensee shall keep such accounts and records as will at all times disclose the names of the consignors, the amount due and payable to each from funds in the Custodial Account for Shippers' Proceeds, and the handling of the funds in such account.

(b) If the Secretary finds that any market agency or licensee has used for purposes of its own any funds received for the purchase of livestock or live poultry on a commission or agency basis, or any other funds which have come into its possession in its capacity as agent of the buyer, such market agency or licensee shall thereafter deposit any such funds in a separate bank account designated as "Custodial Account for Buyers' Funds", or by a similar identifying designation. Such account shall be drawn on only for payment of the purchase price

of livestock or live poultry purchased on behalf of a principal and to obtain therefrom the sums due the market agency or licensee as compensation for its services, and for such sums as are necessary to pay all legal charges incurred in connection with the purchase of livestock or live poultry which the market agency or licensee may in its capacity as agent, be required to pay for and on behalf of its principal. The market agency or licensee shall keep such accounts and records as will at all times disclose the names of the principals, the amount of funds received from such principals, and the amount paid on behalf of such principals from funds in the Custodial Account for Buyers' Funds.

ACCOUNTS AND RECORDS

§ 201.43 *Market agencies and licensees to make prompt accounting and transmittal of net proceeds.* Each market agency shall, before the close of the next business day following the sale of any livestock consigned to it for sale, transmit or deliver to the consignor or shipper of the livestock, or his duly authorized agent, in the absence of any knowledge that any other person, or persons, has any interest in the livestock, the net proceeds received from the sale and a true written account of such sale, showing the number, weight, and price of each kind of animal sold, the name of the purchaser, the date of sale, the commission, yardage, and other lawful charges, and such other facts as may be necessary to complete the account and show fully the true nature of the transaction. Each licensee, acting as a broker, factor, or commission merchant, shall, before the close of the next business day following the sale of live poultry consigned to it for sale, transmit or deliver to the consignor or shipper of the live poultry, or his duly authorized agent, in the absence of any knowledge that any other person, or persons, has any interest in the live poultry, the net proceeds received from the sale and a true written account of such sale showing the number of pounds and the price of each kind of poultry sold, the date of sale, the name of the purchaser, the commission, and other lawful charges, and such other facts as may be necessary to complete the account and show fully the true nature of the transaction.

§ 201.44 *Market agencies and licensees to render prompt accounting for purchases on order.* Each market agency and licensee shall, promptly following the purchase of livestock or live poultry on a commission or agency basis, transmit or deliver to the person for whose account such purchase was made, or his duly authorized agent, a true written account of the purchase showing the number, weight, and price of each kind of animal purchased, or the weight and price of each kind of live poultry purchased, the names of the persons from whom purchased, the date of purchase, the commission and other lawful charges, and such other facts as may be necessary to complete the account and show fully the true nature of the transaction.

§ 201.45 *Market agencies and licensees to make records available for inspection by owners, consignors, and purchasers.* Each market agency and licensee engaged in the business of selling or buying livestock or live poultry on a commission or agency basis shall, on request from an owner, consignor, or purchaser, make available copies

of bills covering charges paid by such market agency or licensee for and on behalf of the owner, consignor, or purchaser which were deducted from the gross proceeds of the sale of livestock or live poultry or added to the purchase price thereof when accounting for the sale or purchase.

§ 201.46 *Stockyard owners, market agencies, dealers, and licensees to keep daily record.* (a) Each stockyard owner, in addition to other necessary records, shall make and keep an accurate record of the number of head of each class of livestock received, shipped, or disposed of locally each day. Each market agency or dealer buying or selling livestock on a commission basis or otherwise, except packer buyers registered as dealers to purchase livestock for slaughter only, in addition to other necessary records, shall make and keep an accurate record of the number and weight of livestock bought, sold, or otherwise disposed of each business day, the prices paid or received therefor, and the charges made for services.

(b) Each licensee buying or selling live poultry on a commission basis or otherwise, in addition to other necessary records, shall make and keep an accurate record of the number of pounds of live poultry bought or sold each business day, the prices paid or received therefor, and the charges made for services and facilities.

§ 201.47 *Market agencies and licensees to disclose business relationships, if any, with purchasers.* No market agency or licensee acting as a broker, factor, or commission merchant shall knowingly sell or dispose of consigned livestock or live poultry to any person in whose business such market agency or licensee, or any stockholder, owner, officer, or employee thereof, has a financial interest, or to any person who has a financial interest in such market agency or licensee, unless the market agency or licensee discloses on the accounts of sales issued to the consignors concerned the nature of the relationship existing between the market agency or licensee and the buyers of the livestock or live poultry and then only if the livestock or live poultry has been offered for sale on the open market and the purchaser's bid exceeds that of other bidders. The provisions of this section shall not be construed to permit any transaction prohibited by §§ 201.57 and 201.60 relating to sales of livestock or live poultry out of consignments to owners, officers, agents, or employees of the market agencies or licensees to which the livestock or live poultry was consigned.

§ 201.48 *Sellers of live poultry to issue sales tickets at designated markets.* With respect to each purchase or sale of live poultry by licensees at designated markets a ticket shall be prepared by the seller at the time of sale. Each ticket shall show the name of the designated market, the date of the transaction, the names of the seller and buyer, the number of coops, kinds of poultry, price per pound, and such terms and conditions as the parties may agree upon. Each ticket shall be legibly signed by the seller and the buyer or authorized representatives thereof and when thus signed shall constitute the contract of purchase and sale. One copy of such ticket shall be retained by the seller. On request a copy shall be furnished to the buyer. A copy shall be transmitted with an accounting of the sale to the owner

or consignor of the live poultry if the transaction is one on an agency basis. Settlement between seller and buyer shall be on the basis of the duly executed and signed tickets required by this section unless good cause is shown for settlement on some other basis.

§ 201.49 *Requirements regarding scale tickets evidencing weighing of livestock or live poultry.* When livestock or live poultry is weighed for purposes of purchase or sale, a scale ticket shall be issued which shall show the name of the agency performing the weighing service, the date of the weighing, the number of the scale or other information identifying the scale upon which the weighing is performed, the name of the seller, the name of the buyer, and the name of the consignor, or understandable abbreviations of such names. In the case of livestock, in addition to the information referred to in this section, the scale ticket shall show the number of head, kind, and actual weight of the livestock, the amount of dockage, if any, and the name or initials of the person who weighed the livestock. In the case of live poultry, in addition to the information referred to in this section, the scale ticket shall show the number of coops weighed, the gross, tare, and net weights, and the name or initials of the person operating the scale at the time the weighing is done. At stockyards only stockyard owners, or State agencies registered as market agencies (when weighing is required to be performed by State agencies) shall weigh livestock and execute and issue scale tickets. In transactions subject to the act at other locations, market agencies, dealers and packers shall be responsible for the accurate weighing of livestock and the execution and issuance of scale tickets.

In live poultry marketing areas designated under the act only licensees shall weigh live poultry and execute and issue scale tickets. Scale tickets issued under this section shall be in triplicate form, serially numbered, and if such tickets are used on a type-registering beam they shall conform to the specifications of the National Bureau of Standards. One copy shall be retained by the stockyard owner, market agency, dealer, licensee or other person issuing the same, and one copy shall be furnished to the seller and one copy to the buyer. Duly authenticated copies shall be furnished on request to any owner or consignor of livestock or live poultry. No change in weight shall be made except upon a reweighing of the livestock or live poultry. In the case of an error of the weighmaster in preparing the scale ticket, other than in the weight, he shall prepare a corrected scale ticket showing the corrections made and stating on the back thereof the reasons for such changes. In the event of an error in the preparation of a scale ticket, other than in the weight, due to misinformation having been furnished by the seller or buyer, the weighmaster upon request of the seller or buyer shall issue another ticket bearing appropriate corrections or a correction slip which shall show thereon the changes made and on the back thereof the reasons for such changes. Before such correction ticket or slip shall be issued the weighmaster shall require the person requesting the change to sign such ticket or slip. The correction ticket or slip shall be attached to the original ticket, bear the same serial number, and show on its face that it is a correction ticket or slip.

§ 201.50 *Records; disposition.* (a) Except as otherwise provided in paragraphs (b) and (c) of this section, no stockyard owner, market

agency, dealer, or licensee shall, without the consent in writing of the Director, destroy or dispose of any books, records, documents, or papers which contain, explain, or modify transactions in his business under the Act.

(b) Every stockyard owner, market agency, dealer, or licensee may destroy or dispose of the following categories of records after they have been retained for a period of two full calendar years:

STOCKYARD OWNERS

All feed records.
Dipping and spraying orders.
Vaccinating and testing orders.
Orders for special services.
Routine correspondence.
Railroad advance charges.
Bills to commission firms and others.
Records of shipments by States and markets.
Deposit slips.
Bank statements.
Cancelled checks and drafts.
Check stubs.
Railroad in-bound records.
Truck-in receipt records.
Delivery records.
Yarding receipts.
Pass-out and delivery orders.
Truck shipping orders.
Railroad shipping orders.
Scale yarding records.
Scale tickets.

MARKET AGENCIES

Scale tickets.
Bills from stockyard company.
Bills for livestock purchased.
Gate tickets.
Routine correspondence.
Way-bills and truckers tickets.
Accounts of sales.
Accounts of purchases.
Bills and invoices to buyers.
Deposit slips.
Bank statements.
Cancelled checks and drafts.
Check stubs.

DEALERS

Bills from stockyard company.
Bills for livestock purchased.
Accounts of sales.
Routine correspondence.
Bills to purchasers.
Scale tickets.
Deposit slips.
Bank statements.
Cancelled checks and drafts.
Check stubs.

LICENSEES

(COMMISSION MERCHANTS)

Invoice or receiving tickets.
Scale tickets—Charge tickets.
Accounts of sales.
Deposit slips.
Bank statements.
Cancelled checks and drafts.
Check stubs.
Bills to purchasers.
Lists of accounts receivable.
Routine correspondence.
Sales tickets.

(DEALERS)

Purchase statements to shippers.
Contracts with shippers.
Bills from receivers.
Deposit slips.
Bank statements.
Cancelled checks and drafts.
Check stubs.
Sales tickets—Charge tickets.
Routine correspondence.
Scale tickets.

(c) The two-year period specified in paragraph (b) of this section shall be extended if necessary to comply with any Federal, State, or local law, or if the stockyard owner, market agency, dealer, or licensee is notified in writing by the Director that specified records should be retained pending the completion of any investigation or proceeding under the Act.

§ 201.51 *Contracts; stockyard owners to furnish copies of.*
Each stockyard owner shall furnish to the Director at Washington, D.C., true copies of all contracts, and amendments thereof, between such stockyard owner and packing, rendering, serum, fertilizer, or other establishments relating to the business of the stockyard owner, except when it is shown that copies of such documents in the form in which they are effective are already in the possession of the United

States Government at Washington, D.C., and available to the Secretary.

§ 201.52 *Information as to sales on commission or agency basis not to be furnished to unauthorized parties.* No market agency or licensee, in connection with the sale of livestock or live poultry on a commission or agency basis, shall give to any person, except a person authorized by the Deputy Administrator to obtain such information or a person who has a financial interest in the consignment or a statement in writing from the owner thereof authorizing the market agency or licensee to furnish such information, any copy of an account of sale or other paper or information which will reveal to such person information relating to the price at which livestock or live poultry was sold or the amount of the net proceeds thereof remitted to the owner or consignor: *Provided, however,* That this shall not prevent a market agency or licensee from furnishing to a trucker, hauling livestock or live poultry for hire, information as to the weight of such livestock or live poultry in order that the trucker may have the necessary facts on which to base his hauling charges: *And provided further,* That this shall not prevent a market agency or licensee from giving to recognized market news reporting services such information as may be necessary to enable such reporting services to furnish the public with market news data.

TRADE PRACTICES

§ 201.53 *Livestock and live poultry market conditions and prices; persons subject to act not to circulate misleading reports.* No packer, stockyard owner, market agency, dealer, or licensee shall knowingly make, issue, or circulate any false or misleading report, record, or representation concerning livestock or live poultry market conditions or the price or sale of any livestock or live poultry.

§ 201.54 *Gratuities.* (a) No stockyard owner, market agency, dealer, or licensee engaged in the business of selling or buying livestock or live poultry on a commission basis or otherwise, shall give any trucker delivering livestock or live poultry for owners or consignors any gratuities, money, meals, or things of value except advertising novelties having a total value not in excess of 50 cents. This regulation shall not preclude loans by a stockyard owner, market agency, dealer, or licensee to a trucker or shipper of livestock or live poultry which are evidenced by an interest-bearing note, properly secured, and having a definite due date.

(b) No stockyard owner shall receive or knowingly permit any officer, agent, or employee of the stockyard to receive, from any market agency, dealer, packer, or other user of such stockyard, and no market agency, dealer, or packer shall offer, make, or give to any stockyard owner, or to any officer, agent, or employee of a stockyard, any gift, payment, loan, or other consideration, except the established charges for, or in connection with, the furnishing of stockyard services.

(c) No market agency, engaged in selling or buying livestock on a commission basis or otherwise, shall receive, or knowingly permit any owner, officer, agent, or employee of the market agency to receive, from any consignor, principal, dealer, packer, or other user of such

market agency services, and no dealer, packer, or market agency shall offer, make, or give to any owner, officer, agent, or employee of a market agency, any gift, payment, loan, or other consideration except the established charges for, or in connection with, the furnishing of market agency services.

§ 201.55 *Purchases and sales to be made on actual weights.*

When livestock or live poultry is bought or sold on a weight basis in transactions subject to the provisions of the act, settlement therefor shall be on the basis of the weight shown on the scale ticket or correction ticket, as the case may be. Any weight figures shown on accounts of sale, accounts of purchase, invoices, bills, or statements issued in connection with transactions subject to the act shall be actual weights obtained on scales operated or used by stockyard owners, market agencies, dealers, or packers, in the case of livestock, or on scales operated by licensees, in the case of live poultry, at the place and at the time of the consummation of the transactions in question or, if not, shall be appropriately explained on the accountings, bills, or statements issued.

§ 201.56 *Filling orders; price to be paid.* No market agency engaged in the business of selling and buying livestock on a commission basis shall use any livestock consigned to it for sale to fill orders, except as provided in § 201.62, and then only at a price higher than the highest available bid on such livestock after it has been offered for sale on the open market in the customary manner.

§ 201.57 *Livestock sold at auctions; purchases from consignments.* (a) No market agency engaged in selling consigned livestock at auction shall permit its owners, officers, agents, or employees to purchase livestock from consignments for resale for their own speculative accounts, nor shall it permit its owners, officers, agents, or employees to enter into any agreements, relationships, or associations with other parties whereby such owners, officers, agents, or employees shall share, directly or indirectly, in profits realized from resale of livestock purchased out of consignments; nor shall such market agency permit auctioneers or weighmasters, or other employees performing duties of comparable responsibility in connection with the actual conduct of auction sales by the market agency, to purchase livestock out of consignments for any purpose for their own account. This shall not preclude employees of the market agency, whose duties in connection with the selling of livestock by auction do not involve the making of determinations or decisions directly affecting the interests of consignors, from purchasing livestock from consignments for their own accounts for purposes other than speculative resale, provided all such purchases are made by such employees bidding openly and competitively at auction against other buyers and, on the accounts of sale issued, disclosure is made to the consignors concerned of the relationship of the buyers to the market agency.

(b) No market agency engaged in selling livestock at auction shall weigh livestock from its consignments to a dealer account it maintains except when necessary to protect the legitimate interests of consignors and then only after having complied with the requirements of § 201.59. Whenever consigned livestock is offered for sale at auction and is bought by the market agency or by any person in whose business the market agency has a financial interest, the name of the buyer shall be

publicly announced by the market agency at the conclusion of the transaction with respect to such livestock and the accounts of sales furnished the consignors concerned shall disclose the information required by § 201.47. The provisions of this section shall not preclude bona fide owners or consignors of livestock from exercising such rights as are conferred on them by the laws of the State in which the auction market is located relating to sales of livestock at auction.

§ 201.58 *Sales to be to highest bidder without intermingling and not conditioned on sales of other consignments.* Every market agency and licensee engaged in the business of selling livestock or live poultry on a commission or agency basis shall offer the livestock or live poultry consigned to it for sale on the open market and shall sell such livestock or live poultry at the highest available bid. In all instances the market agency or licensee shall sell each consignment of livestock or live poultry on its merits and shall not intermingle, prior to sale and for purpose of sale, the livestock or live poultry belonging to one consignor with the livestock or live poultry belonging to another and different consignor unless the consent of the several consignors has been obtained in advance. A market agency or licensee shall not make the sale of one consignment of livestock or live poultry conditional on the sale of another and different consignment of livestock or live poultry without the consent of the owners. If livestock or live poultry belonging to different owners is graded and sold in lots, settlement shall be on the basis of the weight shown on the scale ticket or correction ticket, as the case may be, issued at the time the livestock or live poultry is weighed or graded.

§ 201.59 *Taking consignments into own account, accounting; resales.* If a person registered to operate both as a market agency and dealer, or licensed under the act, takes to his own account livestock or live poultry consigned to him for sale on a commission or agency basis, he shall do so only after he has offered such livestock or live poultry for sale on the open market in the customary manner, and then such livestock or live poultry shall be taken into his account only at a price higher than the highest available bid. In such event the market agency or licensee, in accounting to the owner or consignor of the livestock or live poultry, shall show on the account of sale as the purchaser of the livestock or live poultry the full, true, and correct name of the market agency or licensee. In the event a market agency or licensee takes to its account livestock or live poultry belonging to one owner and resells such livestock or live poultry in one lot on the same day at a price higher than that remitted to the owner, such additional price shall be remitted to the owner in a separate accounting.

§ 201.60 *Consignments on commission; sale of livestock—(a) Consignments on commission; officer, agent, or employee of consignee not to purchase from.* No market agency or licensee, except as provided in § 201.57, shall sell any consigned livestock or live poultry to any owner, officer, agent, or employee of the market agency or licensee for his own account, or enter, or permit any such owner, officer, agent, or employee, to enter, into any agreement, relationship, or association with anyone whereby such market agency or licensee, or any owner, officer, agent, or employee thereof, shares in the profits realized from the resale of livestock or live poultry purchased from a consign-

ment to such market agency or licensee: *Provided*, That the provisions of this paragraph shall not be construed to prohibit any market agency or licensee from selling consigned livestock or live poultry to its wholly-owned subsidiary if such transaction is handled in compliance with the provisions of § 201.47.

(b) *Sale of livestock belonging to a market agency or its officers or employees.* No market agency shall sell livestock belonging to it or to its owners, officers, agents, or employees, or sell livestock in which it or its owners, officers, agents, or employees have an ownership interest, in such manner as to prejudice the interests of consignors who have consigned livestock to the market agency for sale for their accounts.

§ 201.61 *Market agencies engaged in selling or purchasing livestock on commission*—(a) *Market agencies engaged in selling livestock on commission not to clear or finance dealers.* No market agency registered to sell livestock on commission shall on and after September 1, 1954, enter into any new arrangements to clear, finance, or furnish bookkeeping or similar services to independently operated and separately registered dealers nor shall such a market agency enter into any agreement, relationship, or association with dealers or other buyers which might have a tendency to lessen the loyalty of the market agency to its consignors or impair the quality of the market agency's selling services. On and after September 1, 1956, no market agency registered to sell livestock on commission shall clear, finance, or furnish bookkeeping or similar services to an independently operated and separately registered dealer. This shall not preclude a market agency registered to sell and to buy livestock on a commission basis from purchasing livestock on order for buyers, provided such orders are handled in accordance with the requirements of §§ 201.56 and 201.62.

(b) *Market agencies engaged in purchasing livestock on commission not to purchase livestock from clearers to fill orders.* No market agency registered to buy livestock on commission shall, in filling orders, purchase livestock from dealers whose operations it clears, nor shall it enter into any agreement, relationship, or association with dealers or others which will impair the quality of the buying services furnished its principals.

§ 201.62 *Using consigned livestock to fill orders.* Whenever a market agency uses livestock consigned to it for sale to fill, in whole or in part, an order which it has received from a buyer, the market agency shall be presumed with respect to such livestock to be acting solely as the agent of the consignor and shall collect for its services only the selling commissions provided in its tariff: *Provided*, That to offset expenses incurred by market agencies in soliciting bids on consigned livestock from off-the-market buyers, the market agencies at a stockyard may provide in their tariffs for assessing such buyers a uniform expense charge not to exceed one-half of the order-buying charges in effect at the market.

§ 201.63 *Consignments; when not to be solicited or intercepted.* No packer, market agency, dealer or licensee shall solicit or intercept consignments of livestock or live poultry at or on stockyard premises or in designated areas or after such livestock or poultry has been billed

or consigned to a packer, market agency, dealer or licensee and is in course of transportation for delivery to the consignee.

§ 201.64 *Consignments; guaranties not to be given.* No market agency or licensee engaged in the business of selling livestock or live poultry on a commission basis shall guaranty the price at which consigned livestock or live poultry will be sold.

§ 201.65 *Restrictions on employment of salesmen on split commission basis.* No market agency engaged in selling livestock on a commission basis for the accounts of consignors shall employ a livestock salesman under an agreement or arrangement whereby such salesman is to assume the responsibility of selling a species or class of livestock received by the market agency from all consignors but whose compensation is to be based on a split of only those commission charges assessed consignors considered to be "followers" of the particular salesman. This shall not preclude a market agency handling a small volume of livestock of a certain species from employing a salesman to sell such species under an agreement or arrangement whereby the compensation for such salesman's services is to be based on a split of the commissions realized by the market agency from all consignors whose livestock the salesman is to sell; nor shall it preclude a market agency from making incentive payments, or bonus payments, to salesmen based on the over-all operating results of the market agency.

§ 201.66 *Market agencies not to employ packers or dealers.* No market agency engaged in selling livestock on a commission basis for the accounts of consignors or in purchasing livestock on a commission basis for the accounts of principals shall, after having accepted delivery of consignments, or after having accepted orders from buyers, and until the completion of the weighing of the livestock to buyers, utilize the services of packers or independently operated and separately registered dealers, or their employees, in the furnishing by such market agency of its services. In times of emergency, to the extent the Area Supervisor finds it necessary to prevent interruption of reasonable services, he may waive the requirements of this section.

§ 201.67 *Packers or dealers not to own or finance selling agencies.* No packer subject to the act, or independently operated and separately registered dealer, shall have an ownership interest in, finance, or participate in the management or operation of a market agency selling livestock on a commission basis; nor shall such a market agency permit such a packer, or independently operated and separately registered dealer, to have an ownership interest in, finance, or participate in the management or operation of such market agency.

§ 201.68 *Packers not to own or finance order buyers.* No packer subject to the act shall have an ownership interest in, finance, or participate in the management or operation of a market agency purchasing livestock on a commission basis; nor shall such a market agency permit a packer to have an ownership interest in, finance, or participate in the management or operation of such market agency.

§ 201.69 *Furnishing information to competitor buyers.* No packer, dealer, or market agency, in connection with transactions subject to the provisions of the act, shall, in person, or through employed buyers, for the purpose of restricting or limiting competition, manipulating livestock prices, or controlling the movement of livestock, prior

to, or during the conduct of, his buying operations: (a) Furnish competitor packers, dealers, market agencies, or their buyers or representatives, similarly engaged in buying livestock, with information concerning his proposed buying operations, such as the species, classes, volume of livestock to be purchased, or prices to be paid; or (b) furnish any other buying information to competitor buyers.

§ 201.70 *Restriction or limitation of competition between packers and dealers prohibited.* Each packer and dealer engaged in purchasing livestock, in person or through employed buyers, shall conduct his buying operations in competition with, and independently of, other packers and dealers similarly engaged.

SERVICES

§ 201.71 *Accurate weights.* Each stockyard owner, market agency, dealer, or licensee who weighs livestock or live poultry shall install, maintain, and operate the scales used for such weighing so as to insure accurate weights. All livestock scales shall be equipped not later than January 1, 1965, with a type-registering weighbeam, a dial with a mechanical ticket printer, or a similar device which shall be used for printing or stamping the weight values on scale tickets.

§ 201.72¹ *Scales; testing of.* Each stockyard owner, market agency, dealer, or licensee who weighs livestock or live poultry for purposes of purchase or sale or who furnishes scales for such purposes shall cause such scales to be tested properly by competent agencies at suitable intervals in accordance with instructions of the Director, copies of which will be furnished to each stockyard owner, market agency, dealer, or licensee.

§ 201.73¹ *Scale operators to be competent.* Stockyard owners, market agencies, dealers, and licensees shall employ only competent persons of good character and known integrity to operate scales for weighing livestock or live poultry for the purpose of purchase or sale. They shall require such employees to operate the scales in accordance with instructions of the Director, copies of which will be furnished to each stockyard owner, market agency, dealer, or licensee who employs persons to operate scales used for the purposes herein indicated. They also shall require such employees to "rotate" in their weighing assignments at stockyards operating three or more scales. Any person found to be operating scales incorrectly, carelessly, in violation of instructions, or in such manner as to favor or injure any party or agency through incorrect weighing or incorrect weight recording shall be removed from his weighing duties.

§ 201.74 *Scales; reports of tests and inspections.* Each stockyard owner, market agency, dealer, or licensee who weighs livestock or live poultry for purposes of purchase or sale, shall furnish reports of tests and inspections of scales used for such purposes on forms which will be furnished by the Director on request. The stockyard owner,

¹ Instructions governing the testing, operation and use of livestock or poultry scales used for purposes of purchase or sale in commerce, have been issued as Sections 201.72-1, 201.72-2, and 201.73-1 (9 CFR 201.72-1, 201.72-2, and 201.73-1, 28 F.R. 1212) of these regulations and are available in separate publications upon request to the Director.

market agency, dealer, or licensee shall retain one copy of such form when executed, shall cause one copy to be retained by the agency conducting the test and inspection of the scales, and shall deliver the third copy to the Area Supervisor having charge of the work under the act in the particular area in which the scales being tested are located. In case the test and inspection of scales as herein required are conducted by an agency of a State or municipality or other governmental subdivision, the forms ordinarily used by such agency for reporting tests and inspections of scales shall be accepted in lieu of the forms furnished for this purpose by the Director: *Provided*, That the test and inspection forms used by the State or other governmental agency contain substantially the same information as that required by the official form.

§ 201.75 Scales; repairs, adjustments, or replacements after inspection. No scale shall be operated or used by any stockyard owner, market agency, dealer, or licensee unless it has been found upon test and inspection to be in a condition to give accurate weights. If any repairs, adjustments, or replacements are made upon such a scale it shall not be placed in use until it has again been tested and inspected in accordance with these regulations.

§ 201.76 Reweighing. Stockyard owners, market agencies, dealers, packers, and licensees, or their employees, shall reweigh livestock or live poultry on request of duly authorized representatives of the Secretary.

§ 201.77 Weighing for purposes other than purchase or sale. Every stockyard owner, market agency, dealer, packer, and licensee who weighs livestock or live poultry for purposes other than purchase or sale shall show on the scale tickets or other records used in connection with such weights the fact that they are not weights for the purpose of purchase or sale.

§ 201.78² Packer scales. Packers owning or operating scales on which livestock is weighed for purposes of purchase in commerce for slaughter shall install, maintain, and operate such scales so as to insure accurate weights. All livestock scales shall be equipped not later than January 1, 1965, with a type-registering weighbeam, a dial with a mechanical ticket printer, or a similar device which shall be used for printing or stamping the weight values on scale tickets. They shall cause such scales to be tested properly by competent agencies at suitable intervals in accordance with instructions of the Director and shall submit to the Area Supervisor copies of reports on at least two scale tests made during the year. They shall employ only competent persons of good character and known integrity to operate such scales and shall require such employees to operate the scales in accordance with instructions of the Director. Any employee found to be operating scales incorrectly, carelessly, in violation of instructions, or in such manner as to favor or injure any party or agency through incorrect weighing or incorrect weight recording shall

² Instructions governing the operation, use and testing of livestock or poultry scales used for purposes of purchase or sale in commerce, have been issued as Sections 201.72-1, 201.72-2, and 201.73-1 (9 CFR 201.72-1, 201.72-2, and 201.73-1, 28 F.R. 1212) of these regulations and are available in separate publications upon request to the Director.

be removed from his weighing duties. For each draft of livestock weighed for purposes of purchase or sale a scale ticket shall be issued showing, in addition to the weight of the livestock and the amount of dockage, if any, the name of the seller, the name of the buyer, the species, number of head, initials of weigher, and date of weighing. Scale tickets shall be executed at least in duplicate, one copy being supplied the seller and one copy being retained by the packer. Scale tickets printed on type-registering weighbeams shall conform to the specifications of the National Bureau of Standards. No scale shall be used by any packer in weighing livestock for purchase unless it has been found, upon test and inspection, to be in condition to yield accurate weights. If any repairs, adjustments, or replacements are made upon such a scale it shall not be used until it has been retested and found accurate.

§ 201.79 Facilities and services at stockyards or designated cities, markets, or places—(a) *Facilities and services at stockyards or designated cities, markets, or places; discrimination prohibited.* No stockyard owner shall discriminate unfairly with respect to the utilization of pens, alleys, buildings, or facilities for the yarding, weighing, or handling of livestock, or of space for packing, rendering, and other establishments, or otherwise in furnishing services and facilities at his stockyard. No licensee shall discriminate unfairly with respect to the utilization of facilities for the handling of live poultry at designated cities, markets, or places, or discriminate unfairly in the weighing or handling of live poultry or otherwise in furnishing services and facilities thereat.

(b) *Assignment of pens and facilities.* Each person registering to operate as a market agency or dealer shall, before commencing or engaging in the business for which he is registered, provide, or receive assurance of the use of, pens and facilities necessary in the conduct of his business. Every stockyard owner shall, upon reasonable request, or upon his own initiative, without unfair or unjust discrimination, assign to market agencies desiring to engage in selling livestock on a commission basis at the stockyard and to dealers desiring to engage in buying and selling livestock at the stockyard reasonable pens and facilities to be used in connection with the holding, feeding, watering, sorting, or selling of livestock consigned to market agencies or the buying, selling, or receiving of livestock by dealers at such stockyard: *Provided*, That if conditions warrant the stockyard owner may assign reasonable pens or other facilities to be used jointly or in common by two or more of such dealers. Assignments of pens and facilities shall be made, reviewed annually or oftener, if conditions warrant, and adjusted or changed, in number or location, on the basis of the availability of pens and facilities, the need of the registrant for such assignment, volume and kind of livestock handled, the number, size, character, and kind of consignments received or lots purchased, the seniority of the market agency or dealer, the operating conditions of the stockyard, and other pertinent considerations: *Provided*, That no assignment, adjustment, or change shall unfairly or unjustly discriminate against any market agency or dealer or impair the efficiency of operations or the reasonableness of stockyard services furnished patrons of the market.

(c) *Dealers required to operate in assigned pens.* Dealers engaged in buying and selling livestock at a stockyard shall receive, handle, feed, water, hold, sort, trade on, or sell all livestock bought or received by them at such stockyard, and otherwise carry on their dealer operations, in pens and facilities assigned to them by the stockyard owner. This shall not prohibit dealers from consigning livestock to, or bona fide planting livestock with, registered market agencies at the stockyard for sale: *Provided*, That, if conditions at a particular market require such action, the market agencies and the stockyard owner shall prescribe reasonable hours within which dealer-owned livestock may be held in pens assigned to the market agencies.

§ 201.80 *Stockyard facilities or services to be furnished only to unsuspended, properly registered, and bonded parties.* No stockyard owner or operator shall, after notice, furnish services or facilities at his stockyard to any person who attempts to engage in the business of a market agency or dealer at his stockyard without being properly registered and bonded as required by the act and these regulations or whose registration is under suspension.

§ 201.81 *Suspended or revoked registrants or licensees.* No stockyard owner, packer, market agency, dealer, or licensee shall, after notice, employ any person whose registration or license has been suspended or revoked to perform activities at a stockyard or in a designated area, or activities of the same general nature as those in which he was engaged at the time his registration or license was suspended or revoked, during the period of such suspension or revocation. No stockyard owner, packer, market agency, dealer, or licensee shall, after notice, furnish services or facilities or sell livestock or live poultry to or buy livestock or live poultry from any person required by the act and these regulations to be registered and bonded, or licensed, who is not so registered and bonded, or licensed, or whose registration or license is suspended or revoked.

§ 201.82 *Livestock; care and promptness in yarding, feeding, watering, weighing, and handling.* Each stockyard owner, packer, market agency, or dealer, in connection with transactions in which another person has an interest, shall exercise reasonable care and promptness in respect to yarding, feeding, watering, weighing, or otherwise handling livestock to prevent waste of feed, shrinkage, injury, death, or other avoidable loss.

§ 201.83 *Live poultry; care and promptness in feeding, watering, weighing, transporting, and handling.* Each licensee shall exercise reasonable care and promptness in respect to unloading, placing in coops, feeding, watering, weighing, transporting, or otherwise handling live poultry to prevent waste of feed, shrinkage, injury, death, or other avoidable loss.

§ 201.84 *Feed and water furnished livestock or live poultry.* Each stockyard owner, market agency, dealer, or licensee, who furnishes feed or water to livestock or live poultry shall see that it is wholesome and fit for the purpose. Such stockyard owner, market agency, dealer, or licensee shall collect for feed so furnished according to actual or carefully estimated weight only, and, where applicable in accordance with such schedules of rates and charges as are filed by them and effective under the act.

§ 201.85 *Livestock auctions; requirements as to accommodations and persons entering auction ring.* Stockyard owners and market agencies shall furnish adequate accommodations for the public to see and place bids on livestock offered for sale at auction; but only those persons whose presence is necessary to the proper handling, buying, or selling of the livestock shall be permitted in the auction ring while the auction is in progress.

INSPECTION OF BRANDS

§ 201.86 *Application for authorization by State agencies and duly organized State livestock associations; requisites.* A department or agency of a State, or a duly organized livestock association of a State, in which branding or marking of livestock, or both, as a means of establishing ownership prevails by custom or statute, which desires to obtain an authorization to charge and collect at any stockyard subject to the provisions of the act a reasonable and nondiscriminatory fee for the inspection of brands, marks, and other identifying characteristics of livestock originating in or shipped from such State for the purpose of determining the ownership of such livestock shall file with the Deputy Administrator an application in writing for such authorization. The application shall set forth clearly facts showing the necessity for inspection and shall show that branding or marking, or both branding and marking, livestock as a means of establishing ownership prevails by custom or statute in the State. The application shall set forth additional information, including facts showing the experience, extent and efficiency of the organization, possession of necessary records, and any other factor relating to the ability of the applicant to perform the proposed service and, in addition, in the case of a duly organized livestock association, the financial responsibility of the applicant and evidence of its organization. The application shall further state the names of the stockyards at which the applicant proposes to perform this service and the fee which the applicant proposes to charge for rendering the service.

§ 201.87 *Two or more applications from same State; procedure.* In case two or more applications for authorizations to collect a fee for the inspection of brands, marks, and other identifying characteristics of livestock, for the purpose of determining the ownership of such livestock, are received from the same State, and the facts set forth in the applications show such action to be necessary in order to reach a proper determination, a hearing will be held in conformity with the applicable rules of practice governing proceedings under the act.

§ 201.88 *Registration and filing of schedules.* Upon the issuance of an authorization to an agency or an association, said agency or association shall register in accordance with the provisions of § 201.10 and shall file a schedule of its rates and charges for performing the service in the manner and form prescribed by §§ 201.17 to 201.26, inclusive.

§ 201.89 *Records of authorized agencies or associations.* Authorized agencies or associations shall maintain adequate records showing in detail the income derived from the collection of authorized fees, the disbursement of such funds as expenses for conducting the services, the inspections performed, and the results thereof, including records

showing a full description of brands, marks, and other identifying characteristics of livestock which have been inspected. They shall also maintain currently records of the brands, marks, and other identifying characteristics of livestock located in the State from which such agency or association will operate, and with reference to which the authorization has been granted.

§ 201.90 *Fees; deduction and accounting.* Persons registered as market agencies selling livestock on a commission basis, at stockyards where an agency or association has been authorized under the provisions of section 317(a) of the act to collect a reasonable fee for the inspection of brands, marks, and other identifying characteristics of livestock, shall deduct from the proceeds of the sale of such livestock on which such inspection has been performed the fee as set forth in the tariffs filed by the agency or association and in effect at the time the services are rendered and shall pay over to the authorized agency or association the amount of such fees. Said market agencies in accounting to the owner or consignor of the livestock on which such fees are collected shall clearly show the amounts deducted from the proceeds for the payment of such fees and the purpose for which the payments are being made. All other persons receiving at stockyards livestock which is subject to inspection by an agency or association which has been authorized under the provisions of section 317(a) of the act to collect a reasonable fee for the inspection of brands, marks, and other identifying characteristics of livestock, shall pay, upon demand, to such agency or association the fees authorized by the act to be assessed and collected.

§ 201.91 *Inspections; reciprocal arrangements by authorized agencies or associations.* An authorized agency or association may make arrangements with an association or associations in the same or in another State, where branding or marketing livestock prevails by custom or statute to perform inspection service at stockyards on such terms and conditions as may be approved by the Deputy Administrator: *Provided*, That such arrangements will tend to further the purposes of the act and will not result in duplication of charges or services.

§ 201.92 *Maintenance of identity of consignments; inspection to be expedited.* All persons having custody at a stockyard of livestock subject to inspection shall make it available to the inspection agency authorized under the act in such manner as to preserve the identity of the consignment until inspection has been completed. Agencies authorized to conduct such inspection shall perform the work as soon after receipt of the livestock as practicable and as rapidly as is reasonably possible in order to prevent delay in marketing, shrinkage in weight, or other avoidable losses.

§ 201.93 *Existing contracts between authorized agencies; recognition and continuation.* The provisions of existing contracts between agencies authorized to collect fees and market agencies engaged in selling livestock on a commission basis, with reference to disposition of proceeds arising from the sale of livestock as to which ownership has been questioned, shall not be affected by these regulations to the extent that such contracts contain no provisions which are in conflict with the act or such regulations. Copies of all such contracts shall be filed promptly with the Director at Washington, D.C.

GENERAL

§ 201.94 *Information as to business; furnishing of by packers, stockyard owners, market agencies, dealers, and licensees.* Each packer, stockyard owner, market agency, dealer, and licensee shall give to the Secretary or his duly authorized representatives in writing or otherwise, and under oath or affirmation if requested by such representatives, any information concerning the business of the packer, stockyard owner, market agency, dealer, or licensee which may be required in order to carry out the provisions of the act and these regulations within such reasonable time as may be specified in the request for such information.

§ 201.95 *Inspection of records and property of packers, stockyard owners, market agencies, dealers, and licensees.* Each packer, stockyard owner, market agency, dealer, and licensee shall, upon proper request during ordinary business hours, permit authorized representatives of the Secretary to enter the place of business and examine records requested pertaining to the business of the packer, stockyard owner, market agency, dealer, or licensee as such, and to make copies thereof, and inspect such property of persons subject to the act as is necessary to carry out the provisions of the act and these regulations. Any necessary facilities for such examination of records and inspection of property shall be extended to authorized representatives of the Secretary by the packer, stockyard owner, market agency, dealer, or licensee, his agents and employees.

§ 201.96 *Packers, stockyard owners, market agencies, dealers, or licensees; information concerning business not to be divulged.* No agent or employee of the United States shall, without the consent of the packer, stockyard owner, market agency, dealer, or licensee concerned, divulge or make known in any manner, except to such other agent or employee of the United States as may be required to have such knowledge in the regular course of his official duties or except insofar as he may be directed by the Secretary or by a court of competent jurisdiction, any facts or information regarding the business of any packer, stockyard owner, market agency, dealer, or licensee which may come to the knowledge of such agent or employee through any examination or inspection of the business or records of the packer, stockyard owner, market agency, dealer, or licensee or through any information given by the packer, stockyard owner, market agency, dealer, or licensee pursuant to the act and regulations.

§ 201.97 *Annual reports.* Every packer, stockyard owner, market agency, dealer (except a packer buyer registered to purchase livestock for slaughter only), and licensee shall file annually with the Division a report on prescribed forms not later than April 15 following the calendar year end or, if the records are kept on a fiscal year basis, not later than 90 days after the close of his fiscal year. The Director on good cause shown or on his own motion may waive the filing of such reports in particular cases.

§ 201.98 *Packers and dealers not to charge, demand, or collect commission, yardage, or other service charges.* No packer or dealer shall, in connection with the purchase of livestock in commerce, charge, demand, or collect from the seller of the livestock any compensation in the form of commission, yardage, or other service charge.

STATEMENTS OF GENERAL POLICY UNDER THE PACKERS AND STOCKYARDS ACT, 1921, AS AMENDED

Sec.		Sec.	
203.1	Statement of general policy with respect to lamb buying practices.	203.4	Statement with respect to the disposition of certain records made or kept by packers.
203.2	Statement of general policy with respect to the giving by meat packers of meat and other gifts to Government employees.	203.5	Statement with respect to market agencies paying the expenses of livestock buyers.
203.3	Statement of interpretation with respect to meat packer sales promotion programs.		

§ 203.1 *Statement of general policy with respect to lamb buying practices.* (a) It has been brought to the attention of the Agricultural Marketing Service, United States Department of Agriculture, that packers, dealers, and market agencies subject to the provisions of the Packers and Stockyards Act, are engaging in certain practices in connection with the purchase and sale of lambs in prominent lamb producing areas of the United States which are injurious to lamb producers. The practices relate to the discounting of prices by buyers in the purchase of heavy lambs.

(b) The following methods of buying lambs are considered to be unfair practices under the provisions of the Packers and Stockyards Act:

(1) A buyer limiting payment for lambs to a designated average weight and requiring the lamb producer to give any additional weight to the buyer without payment.

(2) A buyer subtracting weight from the true and actual weight of the lambs.

(c) The practices in paragraph (b) of this section result in misleading market information and the issuance of incorrect scale tickets, invoices, and other documents relating to the purchase and sale transaction. It is believed the provisions of the Packers and Stockyards Act, under Title II and Title III, prohibit all packers, dealers, and market agencies subject to the provisions of the Act from engaging in these practices.

(d) In addition, the Agricultural Marketing Service has received complaints from lamb producers with respect to the practice of lamb buyers discounting prices paid for lambs where the weight of the lambs exceeds a specified average weight. One example of this practice is where a buyer agrees to purchase a lot of lambs at \$21 per hundred-weight, provided that the average weight is not in excess of 105 pounds, but requires a discount of the \$21 per hundredweight price at the rate of 25 cents for each pound in excess of the 105 pounds. This type of buying practice results in the final sales price being made subject to a contingency based upon average weight. Where the weight is above the specified weight, the purchase price is not definite at the time the agreement to purchase is entered into, the discount to be applied is unknown until the lambs are weighed, and the final sales price, upon which payment to the lamb producer is based, can only be ascertained by weighing the lambs to the buyer. It is believed that this buying

practice should be discontinued. This method of buying lends itself to unfair and deceptive practices under the Act since it has the tendency to mislead the producer with respect to the final sales price and can be used by a buyer to force a producer to take an unwarranted discount.

§ 203.2 *Statement of general policy with respect to the giving by meat packers of meat and other gifts to Government employees.* (a) In recent months, the Department has received information, confirmed by investigation, that a number of packers subject to the Packers and Stockyards Act have made gifts of meat to Government employees responsible for conducting service activities of the Department. Such gifts have the implications of fraud, even if not made specifically for the purpose of influencing these employees in the performance of their duties.

(b) It is a violation of the Meat Inspection Act for any person, firm, or corporation to give to any employee of the Department performing duties under such act anything of value with intent to influence such employee in the discharge of his duties, or for such employee to receive from any person, firm, or corporation engaged in interstate or foreign commerce any gift given with any intent or purpose whatsoever (21 U.S.C. 90). Under the Federal meat grading regulations, the giving or attempting to give by a packer of anything of value to any employee of the Department authorized to perform any function under such regulations is a basis for the withdrawal of Federal meat grading service (7 CFR 53.13). The receiving by an employee of the Department of any gift from any person for whom grading, inspection, or other service work is performed is specifically prohibited by Departmental regulations.

(c) Upon the basis of paragraphs (a) and (b) of this section, it is the view of the Department that it is an unfair and deceptive practice in violation of section 202(a) of the Packers and Stockyards Act (7 U.S.C. 192(a)) for any person subject to the provisions of Title II of said Act to give or offer to give meat, money, or anything of value to any Government employee who performs inspection, grading, reporting, or regulatory duties directly relating to the purchase or sale of livestock or the preparation or distribution of meats, meat food products, livestock products in unmanufactured form, poultry or poultry products.

§ 203.3 *Statement with respect to meat packer sales promotion programs.* (a) During the past several years, a number of packers subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), have sponsored meat and meat food product sales promotion programs under which valuable gifts ranging from articles of clothing to automobiles and outboard boats and motors have been offered and given to their retail food store customer accounts and to the employees of such customer accounts. Many of the promotion programs in question have been based upon a "point system" whereby so-called "participating customer accounts" were credited with points for each unit of a promotion item purchased from a sponsoring packer during a specified period of time. At the end of such specified time, the accumulated points were redeemed by persons connected with the

customer accounts for prizes and gifts selected from a gift catalog supplied by the sponsoring packer.

(b) Investigation by the Packers and Stockyards Division of the Agricultural Marketing Service has disclosed that sales promotion programs of the type in question, which are based on the giving of gifts to retail food store customer accounts or to the employees or agents of such customer accounts, constitute a marketing practice under which sellers tend to compete in the sale of their products on the basis of inducements offered to their customers in the form of personal gifts, rather than on the basis of the merits and prices of the competing products, and may result in (1) the lessening of competition by unduly hampering sales of competing products, and (2) the making or giving of undue or unreasonable preferences or advantages.

(c) It is the view of the Agricultural Marketing Service that sales promotion programs, which are found in fact to produce any of the enumerated or similar results, constitute violations of section 202 of the Packers and Stockyards Act (7 U.S.C. 192), and that packers subject to the Act should voluntarily discontinue sponsoring or conducting any such program. In the future, if any packer sponsors or conducts a sales promotion program of the type in question, consideration will be given by the Agricultural Marketing Service to the issuance of a complaint charging the packer with violation of section 202 of the Act. In the formal administrative proceeding initiated by any such complaint, the Judicial Officer of the Department will determine, after full hearing, whether the packer has violated the Act and should be ordered to cease and desist from continuing such violation.

§ 203.4 *Statement with respect to the disposition of certain records made or kept by packers.* (a) Section 401 of the Packers and Stockyards Act (7 U.S.C. 221) provides, in part, that every packer shall keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business, including the true ownership of such business by stockholding or otherwise. This section contains no provision as to the period of time such records are to be retained. Apparently, it is contemplated that records which are made or kept by a packer to disclose transactions involved in his business should be retained for such periods of time as may be necessary to permit the Packers and Stockyards Division of the Agricultural Marketing Service a reasonable opportunity to examine such records in connection with its administration of the Act.

(b) In the course of conducting investigations under the Act, the Packers and Stockyards Division has found that the practice varies among packers with respect to the retention period for records made or kept to disclose transactions involved in their business; some packers retain such records for extended periods of time, while other packers dispose of their records after much shorter periods of time. For this reason the Agricultural Marketing Service has formulated and adopted for the guidance of all packers the following statement concerning its views as to periods of time after which certain specified records relating to the purchase or sale of livestock, meat, meat food products, livestock products in unmanufactured form, poultry or poultry products may be disposed of.

(c) It is the view of the Agricultural Marketing Service that set forth in subparagraphs (1), (2), and (3) of this paragraph, are reasonable periods of time after which packers subject to the provisions of the Packers and Stockyards Act, may dispose of the records specified in said subparagraphs. The Agricultural Marketing Service recognizes that many packers do not find it necessary to make or keep all such records in order to comply with the provisions of § 401 of the Act. On the other hand, the Agricultural Marketing Service makes no attempt to cover in this statement many other business records which packers may maintain. Questions pertaining to the disposition of records not referred to herein, and requests for special dispositions of records named herein, may be addressed to the Director, Packers and Stockyards Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C. Microfilm copies of records may be substituted for the actual records and duplicate copies of records may be disposed of without notification to the Director of the Packers and Stockyards Division. The periods specified in subparagraphs (1), (2), and (3) of this paragraph should be extended if necessary to comply with any Federal, State, or local law, or if the packer is notified in writing by the Director of the Packers and Stockyards Division that specified records should be retained pending the completion of any investigation or proceeding under the Act.

(1) The following records made or kept by a packer may be disposed of after one year: Cutting tests; departmental transfers; buyers' estimates; drive sheets; scale tickets received from others; inventory and products in storage; receiving records; trial balances; departmental overhead or expense recapitulations; bank statements, reconciliations and deposit slips; production or sale tonnage reports (including recapitulations and summaries of routes, branches, plants, etc.); buying or selling pricing instructions and price lists; correspondence, telegrams, teletype communications and memoranda relating to matters other than contracts, agreements, purchase or sales invoices, or claims or credit memoranda.

(2) The following records made or kept by a packer may be disposed of after two years: Kill sheets, lot sheets or carcass graded cost sheets; carcass hot weight sheets and carcass test cost sheets by lots for purchases of livestock on a grade and yield or grade or yield basis; contracts and agreements; purchase invoices; sales invoices; freight bills, bills of lading or shipping tickets; scale tickets and weight records issued or prepared by the packer; cash sales receipts and memoranda; claims and credit memoranda; canceled checks and drafts; check stubs or vouchers; correspondence, telegrams, teletype communications, and memoranda relating to contracts, agreements, purchase or sales invoices, or claims or credit memoranda.

(3) The following records made or kept by a packer may be disposed of after three years: Departmental statements and summaries; balance sheets and profit and loss or operating statements.

If it is found that a packer subject to the Act has disposed of the records referred to above prior to the periods specified herein, consideration will be given by the Agricultural Marketing Service to the is-

suance of a complaint charging the packer with violation of section 401 of the Act. In the formal administrative proceeding initiated by any such complaint, the Judicial Officer of the Department will determine, after full hearing, whether the packer has kept accounts, records, and memoranda which fully and correctly disclose all transactions involved in his business and will issue an appropriate order.

The periods specified herein after which records may be disposed of have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942 (56 Stat. 1078; 5 U.S.C. 139 et seq.).

§ 203.5 *Statement with respect to market agencies paying the expenses of livestock buyers.* It has become a practice in certain areas of the country for market agencies, engaged in the business of selling consigned livestock on a commission basis, to pay certain of the business or personal expenses incurred by buyers attending livestock sales conducted by such market agencies, such as, expenses for meals, lodging, travel, entertainment and long distance telephone calls. Investigation by the Packers and Stockyards Division, Agricultural Marketing Service, discloses that this practice tends to become a method of competition between similarly engaged market agencies and results in undue and unreasonable cost burdens on such market agencies and the livestock producers who sell their livestock through such market agencies.

It is the view of the Packers and Stockyards Division of the Agricultural Marketing Service that it constitutes violations of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), for any market agency engaged in the business of selling consigned livestock on a commission basis, to pay, directly or indirectly, any personal or business expenses of livestock buyers attending sales conducted by such market agency. In the future, if any market agency engages in such practice, consideration will be given by the Agricultural Marketing Service to the issuance of a complaint charging the market agency with violation of the Act. In the formal administrative proceeding initiated by any such complaint, the Judicial Officer of the Department will determine, after full hearing, whether the market agency has violated the Act and should be ordered to cease and desist from continuing such violation, and whether the registration of such market agency should be suspended for a reasonable period of time.

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